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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended March 31, 2010

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 has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐

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, 2010 was 39,792,210.

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EQUINIX, INC.

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PART I - FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

EQUINIX, INC.

Condensed Consolidated Balance Sheets
(in thousands)

	March 31, 2010	December 31, 2009
	(unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	$1,039,302	$ 346,056
Short-term investments	140,611	248,508
Accounts receivable, net	69,722	64,767
Other current assets	64,014	68,556
Total current assets	1,313,649	727,887
Long-term investments	5,225	9,803
Property, plant and equipment, net	1,874,325	1,808,115
Goodwill	359,319	381,050
Intangible assets, net	46,661	51,015
Other assets	68,589	60,280
Total assets	$3,667,768	$3,038,150
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 113,018	$ 99,053
Accrued property, plant and equipment	98,993	109,876
Current portion of capital lease and other financing obligations	6,490	6,452
Current portion of mortgage and loans payable	56,225	58,912
Other current liabilities	41,381	41,166
Total current liabilities	316,107	315,459
Capital lease and other financing obligations, less current portion	152,173	154,577
Mortgage and loans payable, less current portion	247,718	371,322
Senior notes	750,000	—
Convertible debt	899,182	893,706
Other liabilities	115,101	120,603
Total liabilities	2,480,281	1,855,667
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Common stock	40	39
Additional paid-in capital	1,691,726	1,665,662
Accumulated other comprehensive loss	(132,498)	(97,238)
Accumulated deficit	(371,781)	(385,980)
Total stockholders' equity	1,187,487	1,182,483
Total liabilities and stockholders' equity	$3,667,768	$3,038,150

See accompanying notes to condensed consolidated financial statements

EQUINIX, INC.

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

	Three months ended March 31,	
	2010	2009
	(unaudited)	
Revenues	$248,649	$199,231
Costs and operating expenses:		
Cost of revenues	133,050	111,805
Sales and marketing	19,468	14,403
General and administrative	43,155	35,150
Acquisition costs	4,994	—
Restructuring charges	—	(5,833)
Total costs and operating expenses	200,667	155,525
Income from operations	47,982	43,706
Interest income	506	916
Interest expense	(25,675)	(13,451)
Other-than-temporary impairment recovery (loss) on investments	3,420	(2,687)
Loss on debt extinguishment and interest rate swaps, net	(3,377)	—
Other income (expense)	20	(1,419)
Income before income taxes	22,876	27,065
Income tax expense	(8,677)	(11,608)
Net income	$ 14,199	$ 15,457
Earnings per share:		
Basic earnings per share	$ 0.36	$ 0.41
Weighted average shares	39,562	37,861
Diluted earnings per share	$ 0.35	$ 0.40
Weighted average shares	40,785	38,739

See accompanying notes to condensed consolidated financial statements

EQUINIX, INC.

Condensed Consolidated Statements of Cash Flows
(in thousands)

	Three months ended March 31,	
	2010	2009
	(unaudited)	
Cash flows from operating activities:		
Net income	$ 14,199	$ 15,457
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	47,301	40,400
Stock-based compensation	14,974	11,538
Restructuring charges	—	(5,833)
Amortization of intangible assets	1,388	1,276
Amortization of debt issuance costs and debt discount	5,554	2,437
Accretion of asset retirement obligation and accrued restructuring charges	568	226
Loss on debt extinguishment and interest rate swaps, net	3,377	—
Other items	499	2,839
Changes in operating assets and liabilities:		
Accounts receivable	(6,086)	4,812
Other assets	4,455	5,623
Accounts payable and accrued expenses	15,886	6,282
Accrued restructuring charges	(412)	(521)
Other liabilities	(1,891)	2,168
Net cash provided by operating activities	99,812	86,704
Cash flows from investing activities:		
Purchases of investments	(89,984)	—
Sales of investments	1,509	11,866
Maturities of investments	200,760	11,754
Purchases of other property, plant and equipment	(143,400)	(108,841)
Purchase of restricted cash	(686)	(583)
Release of restricted cash	244	7,840
Other investing activities	—	79
Net cash used in investing activities	(31,557)	(77,885)
Cash flows from financing activities:		
Proceeds from employee equity awards	10,883	4,062
Proceeds from senior notes	750,000	—
Proceeds from loans payable	—	744
Repayment of capital lease and other financing obligations	(1,554)	(969)
Repayment of mortgage and loans payable	(114,340)	(7,210)
Debt issuance costs	(15,193)	(252)
Net cash provided by (used in) financing activities	629,796	(3,625)
Effect of foreign currency exchange rates on cash and cash equivalents	(4,805)	(3,352)
Net increase in cash and cash equivalents	693,246	1,842
Cash and cash equivalents at beginning of period	346,056	220,207
Cash and cash equivalents at end of period	$1,039,302	$ 222,049
Supplemental cash flow information:		
Cash paid for taxes	$ 578	$ 2
Cash paid for interest	$ 8,288	$ 8,766

See accompanying notes to condensed consolidated financial statements

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation and Significant Accounting Policies

Basis of Presentation

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 condensed consolidated balance sheet data at December 31, 2009 has been derived from audited consolidated financial statements at that date. The consolidated 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 in the United States of America. 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 22, 2010. Results for the interim periods are not necessarily indicative of results for the entire fiscal year.

In October 2009, the Company announced that it had entered into an agreement with Switch & Data Facilities Company, Inc. ("Switch and Data") under which the Company will acquire Switch and Data ("the Switch and Data Acquisition"). Under the terms of the Switch and Data Acquisition, Switch and Data stockholders will have the opportunity to elect to receive either 0.19409 shares of Equinix common stock or $19.06 in cash for each share of Switch and Data stock, valuing the equity of Switch and Data at approximately $649,000,000 based on the closing price of Equinix common stock as of April 23, 2010. The overall consideration to be paid by the Company in the Switch and Data Acquisition will be 80% Equinix common stock and 20% cash. In the event that holders of more than 80% of Switch and Data's stock elect to receive Equinix common stock or holders of more than 20% of Switch and Data's stock elect to receive cash, the consideration of the Switch and Data Acquisition will be pro-rated to achieve these proportions. In addition, a portion of the cash consideration payable to Switch and Data stockholders may be replaced by an equivalent amount of Equinix common stock to the extent necessary to enable the Switch and Data Acquisition to qualify as a tax-free exchange. Switch and Data operates 34 data centers in the U.S. and Canada. The combined company will operate under the Equinix name. The Switch and Data Acquisition will be accounted for using the acquisition method of accounting in accordance with the accounting standard for business combinations. On April 23, 2010, the Company received notification from the United States Department of Justice (the "DOJ") that the DOJ has closed its investigation with respect to the Switch and Data Acquisition and also received notification from the Federal Trade Commission that the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 has been terminated. The Company expects the Switch and Data Acquisition to close on April 30, 2010, subject to the satisfaction or waiver of the other closing conditions set forth in the merger agreement.

Reclassifications

Certain amounts in the accompanying condensed consolidated financial statements have been reclassified to conform to the consolidated financial statement presentation as of and for the three months ended March 31, 2010.

Property, Plant and Equipment

During the year ended December 31, 2009, the Company reassessed the estimated useful lives of certain of its property, plant and equipment as part of a review of the related assumptions. As a result, the estimated useful lives of certain of the Company's property, plant and equipment were affected.

The Company undertook this review due to its determination that it was generally using certain of its existing assets longer than originally anticipated and, therefore, certain estimated useful lives have been lengthened. The change in the estimated useful lives of certain of the Company's property, plant and equipment was accounted for as a change in accounting estimate on a prospective basis effective July 1, 2009 under the accounting standard related to changes in accounting estimates.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The change in estimated useful lives of certain of the Company's property, plant and equipment, which has resulted in less depreciation expense than would have otherwise been recorded, resulted in the following increases for the three months ended March 31, 2010 (in thousands, except per share amounts):

Income from operations	$4,777
Net income	2,684
Earnings per share:	
Basic and diluted	0.07

Earnings per Share

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

	Three months ended March 31,	
	2010	2009
Numerator:		
Numerator for basic earnings per share	$14,199	$15,457
Effect of assumed conversion of convertible debt:		
Interest expense, net of tax	—	45
Numerator for diluted earnings per share	$14,199	$15,502
Denominator:		
Weighted-average shares	39,562	37,861
Effect of dilutive securities:		
Convertible subordinated debentures	—	485
Employee equity awards	1,223	393
Total dilutive potential shares	1,223	878
Denominator for diluted earnings per share	40,785	38,739
Earnings per share:		
Basic	$ 0.36	$ 0.41
Diluted	$ 0.35	$ 0.40

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

	March 31,	
	2010	2009
Shares reserved for conversion of 2.50% convertible subordinated notes	2,232	2,232
Shares reserved for conversion of 3.00% convertible subordinated notes	2,945	2,945
Shares reserved for conversion of 4.75% convertible subordinated notes	4,433	—
Common stock warrants	—	1
Common stock related to stock-based compensation plans	619	2,457
	10,229	7,635

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Fair Value of Financial Instruments

The following table sets forth the estimated fair values of the Company's mortgage and loans payable, senior notes and convertible debt as of (in thousands):

	March 31, 2010		December 31, 2009	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Mortgage and Loans Payable:				
Mortgage payable	$ 91,046	$ 86,954	$ 91,756	$ 83,406
Chicago IBX financing	—	—	109,991	109,700
Asia-Pacific financing	56,881	54,246	64,559	60,827
European financing	122,556	108,133	130,058	111,375
Netherlands financing	8,793	7,400	9,311	7,941
Singapore financing	24,667	22,417	24,559	21,739
	$ 303,943	$ 279,150	$ 430,234	$ 394,988
Senior Notes:				
Senior notes	$ 750,000	$ 746,662	$ —	$ —
Convertible Debt:				
2.50% convertible subordinated notes	$ 225,656	$ 240,119	$ 222,943	$ 228,935
3.00% convertible subordinated notes	395,986	426,821	395,986	461,324
4.75% convertible subordinated notes	277,540	319,345	274,777	307,248
	$ 899,182	$ 986,285	$ 893,706	$ 997,507

Income Taxes

The Company's effective tax rates were 37.9% and 42.9% for the three months ended March 31, 2010 and 2009, respectively.

Construction in Progress

The following table sets forth total interest costs incurred and total interest costs capitalized for the periods presented (in thousands):

	Three months ended March 31,	
	2010	2009
Interest expense	$25,675	$13,451
Interest capitalized	3,748	3,959
Total interest charges incurred	$29,423	$17,410

Stock-Based Compensation

In March 2010, the Compensation Committee and the Stock Award Committee of the Board of Directors approved the issuance of an aggregate of 597,063 shares of restricted stock units to certain employees, including executive officers, pursuant to the 2000 Equity Incentive Plan as part of the Company's annual refresh program. All awards are subject to vesting provisions. All such equity awards described in this paragraph had a total fair value as of the dates of grant of $60,226,000, which is expected to be amortized over a weighted-average period of 2.56 years.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

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,	
	2010	2009
Cost of revenues	$ 1,594	$ 1,094
Sales and marketing	2,931	2,180
General and administrative	10,449	8,264
	$14,974	$11,538

Recent Accounting Pronouncements

In October 2009, the FASB issued Accounting Standards Update No. 2009-13 ("ASU 2009-13"), which addresses the accounting for multiple-deliverable arrangements to enable vendors to account for products or services (deliverables) separately rather than as a combined unit. ASU 2009-13 is effective prospectively for revenue arrangements entered into or materially modified beginning in fiscal years on or after June 15, 2010. Early adoption is permitted. The Company is currently evaluating the impact that the adoption of this standard will have on its condensed consolidated financial statements, if any.

In January 2010, the FASB issued Accounting Standards Update No. 2010-06 ("ASU 2010-06"), which amends the use of fair value measures and the related disclosures. ASU 2010-06 requires new disclosures for transfers in and out of Level 1 and Level 2 fair value measurements. The Company adopted ASU 2010-06 during the three months ended March 31, 2010 and its adoption did not have any significant impact on the Company's condensed consolidated financial statements.

2. Balance Sheet Components

Cash, Cash Equivalents and Short-Term and Long-Term Investments

Cash, cash equivalents and short-term and long-term investments consisted of the following (in thousands) as of:

	March 31, 2010			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. government and agency obligations	$ 1,005,632	$ 109	$ (39)	$ 1,005,702
Cash and money markets	167,381	—	—	167,381
Corporate bonds	7,691	145	—	7,836
Asset-backed securities	4,109	113	(3)	4,219
Total available-for-sale securities	1,184,813	367	(42)	1,185,138
Less amounts classified as cash and cash equivalents	(1,039,334)	—	32	(1,039,302)
Total securities classified as investments	145,479	367	(10)	145,836
Less amounts classified as short-term investments	(140,408)	(210)	7	(140,611)
Total long-term investments	$ 5,071	$ 157	$ (3)	$ 5,225

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Cash, cash equivalents and short-term and long-term investments consisted of the following as of (in thousands):

	December 31, 2009			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. government and agency obligations	$ 437,764	$ 162	$ (3)	$ 437,923
Cash and money markets	147,059	—	—	147,059
Corporate bonds	12,400	203	—	12,603
Asset-backed securities	5,543	134	(4)	5,673
Other securities	1,108	1	—	1,109
Total available-for-sale securities	603,874	500	(7)	604,367
Less amounts classified as cash and cash equivalents	(346,059)	—	3	(346,056)
Total securities classified as investments	257,815	500	(4)	258,311
Less amounts classified as short-term investments	(248,300)	(208)	—	(248,508)
Total long-term investments	$ 9,515	$ 292	$ (4)	$ 9,803

As of March 31, 2010 and December 31, 2009, cash equivalents included investments which were readily convertible to cash and had original maturity dates of 90 days or less. The maturities of securities classified as short-term investments were one year or less as of March 31, 2010 and December 31, 2009. The maturities of securities classified as long-term investments were greater than one year and less than three years as of March 31, 2010 and December 31, 2009.

In January 2010, the Company received an additional distribution of $3,420,000 from its investment in the Reserve Primary Fund (the "Reserve"), a money market fund that suffered a decline in its Net Asset Value ("NAV") of below $1 per share when the Reserve valued its exposure to investments held in Lehman Brothers Holdings, Inc. ("Lehman Brothers") at zero. The Reserve held investments in commercial paper and short-term notes issued by Lehman Brothers, which filed for Chapter 11 bankruptcy protection in September 2008. During the years ended December 31, 2008 and 2009, the Company recorded other-than-temporary impairment losses on the Reserve. The Company also received distributions of its outstanding funds held by the Reserve during the years ended December 31, 2008 and 2009. As of December 31, 2009, the Company had no amounts remaining outstanding on its consolidated balance sheet for the Reserve. As a result, during the three months ended March 31, 2010, the Company recorded a recovery of other-than-temporary impairment loss, which is included in the Company's condensed consolidated statement of operations. During the three months ended March 31, 2009, the Company recorded an other-than-temporary impairment loss of $2,687,000 in connection with its investment in the Reserve, which is included in the Company's condensed consolidated statement of operations.

As of March 31, 2010, the Company's net unrealized gains (losses) on its available-for-sale securities were comprised of the following (in thousands):

	Unrealized gains	Unrealized losses	Net unrealized gains/(losses)
Cash and cash equivalents	$ —	$ (32)	$ (32)
Short-term investments	210	(7)	203
Long-term investments	157	(3)	154
	$ 367	$ (42)	$ 325

While certain marketable securities carry unrealized losses, the Company expects that it will receive both principal and interest according to the stated terms of each of the securities and that the decline in market value is primarily due to changes in the interest rate environment from the time the securities were purchased as compared to interest rates at March 31, 2010.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The following table summarizes the fair value and gross unrealized losses related to 15 available-for-sale securities with an aggregate cost basis of $942,519,000, aggregated by type of investment and length of time that individual securities have been in a continuous unrealized loss position, as of March 31, 2010 (in thousands):

	Securities in a loss position for less than 12 months		Securities in a loss position for 12 months or more	
	Fair value	Gross unrealized losses	Fair value	Gross unrealized losses
U.S. government and agency obligations	$941,884	$ (39)	$ —	$ —
Asset-backed securities	—	—	593	(3)
	$941,884	$ (39)	$ 593	$ (3)

While the Company does not believe it holds investments that are other-than-temporarily impaired and believes that the Company's investments will mature at par, as of March 31, 2010, the Company's investments are subject to the currently adverse market conditions. If market conditions were to deteriorate, the Company could sustain other-than-temporary impairments to its investment portfolio which could result in additional realized losses being recorded or securities markets could become inactive which could affect the liquidity of the Company's investments. As securities mature, the Company has reinvested the proceeds in U.S. government securities, such as Treasury bills and Treasury notes, of a short-term duration and lower yield in order to meet its near term liquidity and capital expenditure requirements. As a result, the Company expects to recognize lower interest income in future periods.

Accounts Receivable

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

	March 31, 2010	December 31, 2009
Accounts receivable	$133,385	$ 126,122
Unearned revenue	(61,770)	(59,635)
Allowance for doubtful accounts	(1,893)	(1,720)
	$ 69,722	$ 64,767

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

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Other Current Assets

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

	March 31, 2010	December 31, 2009
Current portion of deferred tax assets, net	$41,839	$ 46,822
Prepaid expenses	11,747	10,277
Taxes receivable	6,228	7,081
Foreign currency forward contract receivable	1,550	498
Other receivables	1,191	2,083
Other current assets	1,459	1,795
	$64,014	$ 68,556

Property, Plant and Equipment

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

	March 31, 2010	December 31, 2009
IBX plant and machinery	$ 970,654	$ 925,360
Leasehold improvements	571,404	552,548
Buildings	274,464	277,247
Site improvements	195,133	231,437
IBX equipment	184,130	175,030
Computer equipment and software	88,918	85,472
Land	83,291	84,681
Furniture and fixtures	11,246	11,428
Construction in progress	315,530	243,129
	2,694,770	2,586,332
Less accumulated depreciation	(820,445)	(778,217)
	$1,874,325	$1,808,115

Leasehold improvements, IBX plant and machinery, computer equipment and software and buildings recorded under capital leases aggregated $85,625,000 and $87,138,000 at March 31, 2010 and December 31, 2009, respectively. Amortization on the assets recorded under capital leases is included in depreciation expense and accumulated depreciation on such assets totaled $23,498,000 and $12,639,000 for the three months ended March 31, 2010 and 2009, respectively.

As of March 31, 2010 and December 31, 2009, the Company had accrued property, plant and equipment expenditures of $98,993,000 and $109,876,000, respectively. The Company's planned capital expenditures during the remainder of 2010 and thereafter in connection with recently acquired IBX properties and expansion efforts are substantial. For further information, refer to "Other Purchase Commitments" in Note 7.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Goodwill and Other Intangible Assets

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

	March 31, 2010	December 31, 2009
Goodwill:		
Europe	$340,756	$ 362,569
Asia-Pacific	18,563	18,481
	359,319	381,050
Other intangibles:		
Intangible asset – customer contracts	60,430	63,957
Intangible asset – leases	4,469	4,690
Intangible asset – others	1,624	1,630
	66,523	70,277
Accumulated amortization	(19,862)	(19,262)
	46,661	51,015
	$405,980	$ 432,065

The Company's goodwill and intangible assets in Europe, denominated in British pounds and Euros, and goodwill in Asia-Pacific, denominated in Singapore dollars, are subject to foreign currency fluctuations. The Company's foreign currency translation gains and losses, including goodwill and other intangibles, are a component of other comprehensive income and loss.

For the three months ended March 31, 2010 and 2009, the Company recorded amortization expense of $1,388,000 and $1,276,000, respectively, associated with its other intangible assets. Estimated future amortization expense related to these intangibles is as follows (in thousands):

Year ending:	
2010 (nine months remaining)	$ 5,303
2011	5,383
2012	5,363
2013	5,363
2014	5,363
2015 and thereafter	19,886
Total	$46,661

Other Assets

Other assets consisted of the following (in thousands):

	March 31, 2010	December 31, 2009
Debt issuance costs, net	$33,111	$ 19,762
Deposits	26,357	28,032
Restricted cash	3,315	3,021
Prepaid expenses, non current	3,134	3,247
Deferred tax assets, net	1,589	5,171
Other assets	1,083	1,047
	$68,589	$ 60,280

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Accounts Payable and Accrued Expenses

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

	March 31, 2010	December 31, 2009
Accounts payable	$ 23,073	$ 14,874
Accrued compensation and benefits	26,371	35,809
Accrued interest	19,306	6,235
Accrued taxes	16,836	14,508
Accrued utilities and security	13,885	13,526
Accrued professional fees	4,194	4,657
Accrued other	9,353	9,444
	$113,018	$ 99,053

Other Current Liabilities

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

	March 31, 2010	December 31, 2009
Deferred installation revenue	$26,233	$ 26,319
Customer deposits	8,851	8,406
Deferred recurring revenue	2,634	2,689
Accrued restructuring charges	1,903	2,043
Deferred tax liabilities	814	814
Deferred rent	496	403
Other current liabilities	450	492
	$41,381	$ 41,166

Other Liabilities

Other liabilities consisted of the following (in thousands):

	March 31, 2010	December 31, 2009
Deferred rent, non-current	$ 34,436	$ 34,288
Deferred tax liabilities, non-current	24,425	25,937
Asset retirement obligations	19,707	17,710
Deferred installation revenue, non-current	17,535	18,228
Customer deposits, non-current	5,086	5,813
Deferred recurring revenue, non-current	4,924	5,160
Interest rate swap payable, non-current	4,257	8,496
Accrued restructuring charges, non-current	3,692	3,876
Other liabilities	1,039	1,095
	$115,101	$ 120,603

The Company currently leases the majority of its IBX data centers and certain equipment under non-cancelable operating lease agreements expiring through 2027. The IBX data center 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 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.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

3. Fair Value Measurements

The Company's financial assets and liabilities measured at fair value on a recurring basis at March 31, 2010 were as follows (in thousands):

	Fair value at March 31, 2010	Fair value measurement using		
		Level 1	Level 2	Level 3
Assets:				
U.S. Government and Agency obligations	$1,005,702	$ —	$1,005,702	$ —
Cash and money markets	167,381	167,381	—	—
Corporate bonds	7,836	—	7,836	—
Asset-backed securities	4,219	—	4,219	—
Derivative assets (1)	1,550	—	1,550	—
	$1,186,688	$167,381	$1,019,307	$ —
Liabilities:				
Derivative liabilities (2)	(4,257)	—	(4,257)	—
	$ (4,257)	$ —	$ (4,257)	$ —

(1) Included in the consolidated balance sheets within other current assets.
(2) Included in the consolidated balance sheets within other liabilities.

The Company's investments in money market funds, which are classified within Level 1 of the fair value hierarchy, are valued using quoted prices for identical instruments in active markets. The Company's investments in U.S. government and agency securities, corporate bonds and asset-back securities are classified within Level 2 of the fair value hierarchy. Level 2 investments are valued based upon published clearing prices for similar securities with recent trades.

In determining the fair value of the Company's interest rate swap derivatives, the Company uses the present value of expected cash flows based on observable market interest rate curves and volatilities commensurate with the term of each instrument and the credit valuation adjustments to appropriately reflect both the Company's own nonperformance risk and the counterparty's nonperformance risk. For foreign currency derivatives, the Company's approach is to use forward contract and option valuation models employing market observable inputs, such as spot currency rates, time value and option volatilities and adjust for the credit default swap market. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit risk valuation adjustments associated with its derivatives utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by itself and its counterparties. However, as of March 31, 2010, the Company had assessed the significance of the impact of the credit risk valuation adjustments on the overall valuation of its derivative positions and had determined that the credit risk valuation adjustments were not significant to the overall valuation of its derivatives. Therefore, they are categorized as Level 2.

During the three months ended March 31, 2010, the Company did not have any nonfinancial assets or liabilities measured at fair value on a recurring basis.

During the three months ended March 31, 2010, there were no impairment charges recorded in connection with the Company's goodwill and long-lived assets. The Company performs impairment tests for its goodwill at least annually (or whenever events or circumstances indicate a triggering event has occurred indicating that the carrying amount of the asset may not be recoverable). Goodwill attributed to the Company's Europe reporting unit is scheduled to be tested for impairment in the third quarter of 2010 and its Asia-Pacific reporting unit in the fourth quarter of 2010. The Company performs impairment tests for its long-lived assets other than goodwill whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. During the three months ended March 31, 2010, the Company did not incur any additional charges related to its restructuring liabilities. The Company did record new asset retirement obligations during the three months ended March 31, 2010; however, the amounts were not significant.

4. Derivatives and Hedging Activities

Cash Flow Hedges–Interest Rate Swaps

The Company has some variable-rate debt financings. These obligations expose the Company to variability in interest payments and therefore fluctuations in interest expense and cash flows due to changes in interest rates. Interest rate swap contracts are used in the Company's risk management activities in order to minimize significant fluctuations in earnings and cash flows that are caused by interest rate volatility. The Company's interest rate swaps involve the exchange of variable-rate interest payments for fixed-rate interest payments based on the contractual underlying notional amount. Gains and losses on the interest rate swaps that are linked to the debt being hedged are expected to substantially offset this variability in earnings.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

As a result of the prepayment and termination of the Chicago IBX Financing in March 2010 (see Note 6, "Chicago IBX Financing"), the Company paid and terminated the associated interest rate swap for the Chicago IBX Financing at a loss of $3,160,000 in March 2010 as well. Furthermore, the Company's three interest rate swaps associated with the European Financing were deemed to be ineffective hedges as of March 31, 2010 due to the prepayment and termination of the European Financing in April 2010 (see Note 11). As a result, the fair value of $4,203,000 associated with the effective portion of these interest rate swaps in accumulated other comprehensive loss was written off to the statement of operations during the three months ended March 31, 2010.

As of March 31, 2010, the Company had a total of three outstanding interest rate swap instruments with expiration dates in May 2011 as follows (in thousands):

	Notional Amount	Fair Value (1)	Accumulated Other Comprehensive Loss (2)
Liabilities:			
European Financing interest rate swaps	$83,857	$(4,257)	$ —

(1) Included in the condensed consolidated balance sheets within other liabilities.
(2) A total of $4,203,000 associated with the effective portion included in accumulated other comprehensive income (loss) was written off to the statement of operations during the three months ended March 31, 2010 (see Note 6, "Loss on Debt Extinguishment and Interest Rate Swaps, Net").

As of March 31, 2009, the Company had a total of six outstanding interest rate swap instruments with expiration dates ranging from August 2009 to May 2011 as follows (in thousands):

	Notional Amount	Fair Value (1)	Accumulated Other Comprehensive Loss (2)
Liabilities:			
European Financing interest rate swaps	$ 97,681	$ (6,401)	$ (6,632)
Chicago IBX Financing interest rate swap	105,000	(4,798)	(4,798)
	$202,681	$(11,199)	$ (11,430)

(1) Included in the condensed consolidated balance sheets within other current liabilities and other liabilities.
(2) Included in the condensed consolidated balance sheets within accumulated other comprehensive income (loss).

Other Derivatives–Foreign Currency Forward Contracts

The Company uses foreign currency forward contracts to manage the foreign exchange risk associated with certain foreign currency-denominated assets and liabilities. As a result of foreign currency fluctuations, the U.S. dollar equivalent values of the foreign currency-denominated assets and liabilities change. Foreign currency forward contracts represent agreements to exchange the currency of one country for the currency of another country at an agreed-upon price on an agreed-upon settlement date.

The Company has not designated the foreign currency forward contracts as hedging instruments under the accounting standard for derivatives and hedging. Gains and losses on these contracts are included in other income (expense), net, along with those foreign currency gains and losses of the related foreign currency-denominated assets and liabilities associated with these foreign currency forward contracts. The Company entered into various foreign currency forward contracts during the three months ended March 31, 2010 and 2009. As of March 31, 2010, the Company had gross assets totaling $1,679,000 and gross liabilities totaling $128,000 representing the fair values of these foreign currency forward contracts. The Company recorded its foreign currency forward contracts, net, by counter party, within other current assets. During the three months ended March 31, 2010, the Company recognized a net gain of $1,052,000 in connection with its foreign currency forward contracts, which is reflected in other income (expense) on the accompanying condensed consolidated statement of operations. During the three months ended March 31, 2009, the Company recognized a net loss of $176,000 in connection with its foreign currency forward contracts, which is reflected in other income (expense) on the accompanying statement of operations.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

5. Related Party Transactions

The Company has several significant stockholders and other related parties that are also customers and/or vendors. For the three months ended March 31, 2010 and 2009, revenues recognized from related parties were $5,392,000 and $5,811,000, respectively. As of March 31, 2010 and 2009, accounts receivable with these related parties were $3,727,000 and $3,068,000, respectively. For the three months ended March 31, 2010 and 2009, costs and services procured from related parties were $393,000 and $146,000, respectively. As of March 31, 2010 and 2009, accounts payable with these related parties were $234,000 and $95,000, respectively.

6. Debt Facilities and Other Financing Obligations

Senior Notes

In February 2010, the Company issued $750,000,000 aggregate principal amount of 8.125% Senior Notes due March 1, 2018 (the "Senior Notes"). Interest is payable semi-annually on March 1 and September 1 of each year, commencing on September 1, 2010.

The Senior Notes are governed by an Indenture dated March 3, 2010 between the Company, as issuer, and U.S. Bank National Association, as trustee (the "Senior Notes Indenture"). The Senior Notes Indenture contains covenants that limit the Company's ability and the ability of its subsidiaries to, among other things:

- incur additional debt;
- pay dividends or make other restricted payments;
- purchase, redeem or retire capital stock or subordinated debt;
- make asset sales;
- enter into transactions with affiliates;
- incur liens;
- enter into sale-leaseback transactions;
- provide subsidiary guarantees;
- make investments; and
- merge or consolidate with any other person.

Each of these restrictions has a number of important qualifications and exceptions. The Senior Notes are unsecured and rank equal in right of payment to the Company's existing or future senior debt and senior in right of payment to the Company's existing and future subordinated debt. The Senior Notes will be effectively junior to any of the Company's existing and future secured indebtedness and any indebtedness of its subsidiaries.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

At any time prior to March 1, 2013, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of the Senior Notes outstanding under the Senior Notes Indenture, at a redemption price equal to 108.125% of the principal amount of the Senior Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more equity offerings, provided that (i) at least 65% of the aggregate principal amount of the Senior Notes issued under the Senior Notes Indenture remains outstanding immediately after the occurrence of such redemption and (ii) the redemption must occur within 90 days of the date of the closing of such equity offerings. On or after March 1, 2014, the Company may redeem all or a part of the Senior Notes, on any one or more occasions, at the redemption prices set forth below plus accrued and unpaid interest thereon, if any, up to, but not including, the applicable redemption date, if redeemed during the one-year period beginning on March 1 of the years indicated below:

	Redemption price of the Senior Notes
2014	104.0625%
2015	102.0313%
2016 and thereafter	100.0000%

At any time prior to March 1, 2014, the Company may also redeem all or a part of the Senior Notes at a redemption price equal to 100% of the principal amount of the Senior Notes redeemed plus applicable premium (the "Applicable Premium") and accrued and unpaid interest, if any, to, but not including, the date of redemption (the "Redemption Date"). The Applicable Premium means the greater of:

- 1.0% of the principal amount of the Senior Notes; and
- the excess of: (a) the present value at such redemption date of (i) the redemption price of the Senior Notes at March 1, 2014 as shown in the above table, plus (ii) all required interest payments due on the Senior Notes through March 1, 2014 (excluding accrued but unpaid interest, if any, to, but not including the redemption date), computed using a discount rate equal to the yield to maturity of the United States Treasury securities with a constant maturity most nearly equal to the period from the redemption date to March 1, 2014, plus 0.50%; over (b) the principal amount of the Senior Notes.

Upon a change in control, the Company will be required to make an offer to purchase each holder's Senior Notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase

Debt issuance costs related to the Senior Notes were, net of amortization, $14,423,000 as of March 31, 2010.

New Asia-Pacific Financing

In March 2010, five wholly-owned subsidiaries of the Company, located in Australia, Hong Kong, Japan and Singapore, entered into an agreement to enter into a new multi-currency credit facility agreement for approximately $170,000,000 (the "New Asia-Pacific Financing"). The New Asia-Pacific Financing will replace the Company's currently outstanding Asia-Pacific Financing and Singapore Financing when completed. The New Asia-Pacific Financing will have a five-year term and consist of two tranches: (i) Tranche A will be available for immediate drawing upon satisfaction of certain conditions precedent and will be used to refinance the existing Asia-Pacific Financing and Singapore Financing and (ii) Tranche B will be available to draw upon for up to 24 months following the effective date of the New Asia-Pacific Financing. The New Asia Pacific Financing will bear an interest rate of 3.50% above the local borrowing rates for the first 12 months and an interest rate of 2.50% above the local borrowing rates thereafter depending on the leverage ratio within the five subsidiaries of the Company. The New Asia-Pacific Financing will contain financial covenants with which the Company must comply quarterly. The New Asia-Pacific Financing will be guaranteed by the parent, Equinix Inc., and will be secured by certain of the Company's five subsidiaries' assets and share pledges. The Company currently anticipates closing the New Asia-Pacific Financing in the second quarter of 2010.

Chicago IBX Financing

In March 2010, the Company prepaid and terminated the Chicago IBX Financing, of which principal of $109,991,000 was outstanding as of December 31, 2009. The Chicago IBX Financing was prepaid to the lender for an amount equal to 95.909% of the then outstanding principal balance outstanding, plus accrued and unpaid interest, resulting in a gain of $4,460,000. On the same date, the Company paid and terminated the interest rate swap associated with the Chicago IBX Financing (see Note 4) totaling $3,160,000. For additional information, refer to "Loss on Debt Extinguishment and Interest Rate Swaps, Net" below.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Bank of America Revolving Credit Line

In February 2010, the Company amended the Bank of America Revolving Credit Line and extended the maturity date to February 11, 2011. In addition, the Bank of America Revolving Credit Line was amended to permit the Company to fund the cash payment portion of the pending acquisition of Switch and Data and to repay or retire its outstanding loan obligations upon the closing of the Switch and Data Acquisition. The Bank of America Revolving Credit Line will be used primarily to fund the Company's working capital and to enable the Company to issue letters of credit. The effect of issuing letters of credit under the Bank of America Revolving Credit Line reduces the amount available for borrowing under the Bank of America Revolving Credit Line. The Company may borrow, repay and reborrow under the Bank of America Revolving Credit Line at either the prime rate or at a borrowing margin of 2.75% over one, three or six month LIBOR, subject to a minimum borrowing cost of 3.00%. The Bank of America Revolving Credit Line contains three financial covenants, which the Company must comply with quarterly, consisting of a tangible net worth ratio, a debt service ratio and a senior leverage ratio and is collateralized by the Company's domestic accounts receivable balances. As of March 31, 2010, the Company was in compliance with all financial covenants in connection with the Bank of America Revolving Credit Line. The Bank of America Revolving Credit Line is available for renewal subject to mutual agreement by both parties. As of March 31, 2010, the Company had issued 17 irrevocable letters of credit totaling $16,055,000 under the Bank of America Revolving Credit Line. As a result, the amount available to borrow was $8,945,000 as of March 31, 2010.

Loss on Debt Extinguishment and Interest Rate Swaps, Net

As a result of the repayment of the Chicago IBX Financing (see above) in March 2010 and the write-off of the interest rate swaps associated with the European Financing from accumulated other comprehensive income to earnings (see Note 4), the Company recorded a $3,377,000 loss on debt extinguishment and interest rate swaps, net, on the accompanying condensed consolidated statements of operations. Loss on debt extinguishment and interest rate swaps, net consisted of the following (in thousands):

	Three months ended March 31, 2010
Principal discount on the Chicago IBX financing	$ 4,460
Write-off of the unamortized Chicago IBX financing debt issuance costs	(474)
Subtotal – gain on debt extinguishment	3,986
Chicago IBX financing interest rate swap	(3,160)
European financing interest rate swaps	(4,203)
Subtotal – loss on interest rate swaps	(7,363)
Loss on debt extinguishment and interest rate swaps, net	$ (3,377)

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Maturities

Combined aggregate maturities for the Company's various debt facilities and other financing obligations as of March 31, 2010 were as follows (in thousands):

	Convertible debt (1)	Senior notes (1)	Mortgage and loans payable (1)	Capital lease and other financing obligations (2)	Total
2010 (nine months remaining)	$ —	$ —	$ 43,930	$ 12,967	$ 56,897
2011	—	—	55,589	18,981	74,570
2012	250,000	—	34,817	19,180	303,997
2013	—	—	35,139	19,297	54,436
2014	395,986	—	57,377	19,825	473,188
2015 and thereafter	373,750	750,000	77,091	159,498	1,360,339
	1,019,736	750,000	303,943	249,748	2,323,427
Less amount representing interest	—	—	—	(107,610)	(107,610)
Less amount representing debt discount	(120,554)	—	—	—	(120,554)
Plus amount representing residual property value	—	—	—	16,525	16,525
	899,182	750,000	303,943	158,663	2,111,788
Less current portion of principal	—	—	(56,225)	(6,490)	(62,715)
	$ 899,182	$750,000	$247,718	$ 152,173	$2,049,073

(1) Represents principal only.
(2) Represents principal and interest in accordance with minimum lease payments.

7. Commitments and Contingencies

Legal Matters

IPO Litigation

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 initial public offering (the "Underwriter Defendants"). The cases were filed in the United States District Court for the Southern District of New York. Similar lawsuits were filed against approximately 300 other issuers and related parties. These lawsuits have been coordinated before a single judge. 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 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 the Company's 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 the Company's 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 the Company, but denied the motion to dismiss the Section 11 claim.

The parties in the approximately 300 coordinated cases, including the parties in the Equinix case, reached a settlement. It provides for releases of existing claims and claims that could have been asserted relating to the conduct alleged to be wrongful from the class of investors participating in the settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Equinix. On October 6, 2009, the Court granted final approval to the settlement. Six notices of appeal and one petition seeking permission to appeal, from a group of objectors who also filed a notice of appeal, have been filed.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of the matter. 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. The Company intends to continue to defend the action vigorously if the settlement does not survive the appeal.

Pihana Litigation

On August 22, 2008, a complaint was filed against Equinix, certain former officers and directors of Pihana Pacific, Inc. ("Pihana"), certain investors in Pihana, and others. The lawsuit was filed in the First Circuit Court of the State of Hawaii, and arises out of December 2002 agreements pursuant to which Equinix merged Pihana and i-STT (a subsidiary of Singapore Technologies Telemedia Pte Ltd) into the internet exchange services business of Equinix. Plaintiffs, who were allegedly holders of Pihana common stock, allege that their rights as shareholders were violated, and the transaction was effectuated improperly, by Pihana's majority shareholders, officers and directors, with the alleged assistance of Equinix and others. Among other things, plaintiffs contend that they effectively had a right to block the transaction, that this supposed right was disregarded, and that they improperly received no consideration when the deal was completed. The complaint seeks to recover unspecified punitive damages, equitable relief, fees and costs, and compensatory damages in an amount that plaintiffs allegedly "believe may be all or a substantial portion of the approximately $725,000,000 value of Equinix held by Defendants" (a group that includes more than 30 individuals and entities). An amended complaint, which adds new plaintiffs (other alleged holders of Pihana common stock) but is otherwise substantially similar to the original pleading, was filed on September 29, 2008 (the "Amended Complaint"). On October 13, 2008, a complaint was filed in a separate action by another purported holder of Pihana common stock, naming the same defendants and asserting substantially similar allegations as the August 22, 2008 and September 29, 2008 pleadings. On December 12, 2008, the court entered a stipulated order, which consolidated the two actions under one case number and set January 22, 2009 as the last day for Defendants to move to dismiss or otherwise respond to the Amended Complaint, the operative complaint in this case. On January 22, 2009, motions to dismiss the Amended Complaint were filed by Equinix and other Defendants. On April 24, 2009, plaintiffs filed a Second Amended Complaint ("SAC") to correct the naming of certain parties. The SAC is otherwise substantively identical to the Amended Complaint, and all motions to dismiss the Amended Complaint have been treated as responsive to the SAC. On September 1, 2009, the Court heard Defendants' motions to dismiss the SAC and ruled at the hearing that all claims against all Defendants are time-barred. The Court also considered whether there were further independent grounds for dismissing the claims, and supplemental briefing was submitted with respect to claims against one defendant and plaintiffs' renewed request for further leave to amend. On March 23, 2010, the Court entered final Orders granting the motions to dismiss as to all Defendants and issued a minute Order denying Plaintiffs' renewed request for further leave to amend. The Company believes that plaintiffs' claims and alleged damages are without merit and it intends to continue to defend the litigation vigorously.

Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of the matter. 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.

Switch and Data Litigation

In the fourth quarter of 2009, three purported stockholder class action lawsuits were filed against the Company in connection with the Company's proposed merger with Switch and Data. The first, filed October 27, 2009 in the Delaware Chancery Court, names Equinix, Sundance Acquisition Corporation, Switch and Data, and the members of Switch and Data's board of directors as defendants. The lawsuit alleges that the Switch and Data directors breached their fiduciary duties to Switch and Data's stockholders in connection with the proposed merger, and that Equinix aided and abetted these alleged breaches. The second complaint, filed October 30, 2009 in Florida state court, raises similar claims against the same defendants. The third complaint, filed on December 7, 2009 in the United States District Court for the Middle District of Florida, likewise raises similar claims but did not name Sundance Acquisition Corporation as a defendant. Both the second and third complaints included claims alleging that Switch and Data had failed to disclose material information concerning the merger to stockholders.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

On January 19, 2010, counsel for parties in all three lawsuits entered into a memorandum of understanding in which they agreed upon the terms of a settlement of all three lawsuits. In connection with this settlement, the three lawsuits and all claims asserted therein are expected to be dismissed with prejudice. The proposed settlement is conditional upon, among other things, consummation of the merger and final approval of the proposed settlement by the Florida state court. The proposed settlement contemplates that plaintiffs' counsel will apply to the Florida state court for an award of attorneys' fees and costs in an aggregate amount of $900,000, and that the defendants will not oppose or undermine this application. The Company expects that approximately 70 percent of these attorneys' fees will be paid by insurance maintained by Switch and Data, and that the Company will pay the remainder. Pursuant to this agreement, the parties sought and obtained stays of the Florida federal and Delaware actions pending approval of the settlement. On March 22, 2010, the parties entered into a stipulation of settlement and release, adopting the terms of the memorandum of understanding outlined above. Pursuant to this stipulation, on March 25, 2010, the parties filed a Joint Motion for Class Certification and Preliminary Approval of Settlement in Florida state court. If final approval of the settlement is granted, then the parties will seek dismissal with prejudice of the other two actions. If the settlement is not finalized, the Company intends to continue to defend the action vigorously.

Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of the matter. 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.

Litigation Summary

The Company believes that while an unfavorable outcome to these litigations is reasonably possible, a range of potential loss cannot be determined at this time. As a result, the Company had not accrued for any amounts in connection with these legal matters as of March 31, 2010. The Company and its officers and directors intend to continue to defend the actions vigorously.

Other Purchase Commitments

Primarily as a result of the Company's various IBX expansion projects, as of March 31, 2010, the Company was contractually committed for $75,764,000 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. In addition, the Company had numerous other, non-capital purchase commitments in place as of March 31, 2010, such as commitments to purchase power in select locations, primarily in the U.S., Australia, Germany, Singapore and the United Kingdom, through the remainder of 2010 and thereafter, and other open purchase orders for goods or services to be delivered or provided during the remainder of 2010 and thereafter. Such other miscellaneous purchase commitments totaled $101,829,000 as of March 31, 2010.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

8. Other Comprehensive Income and Loss

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

	Three months ended March 31,	
	2010	2009
Net income	$ 14,199	$ 15,457
Foreign currency translation loss, net of tax of $242 and $0	(40,089)	(14,792)
Unrealized gain (loss) on available for sale securities, net of tax of $64 and $288, respectively	(104)	395
Unrealized gain (loss) on interest rate swaps, net of tax of $3,469 and $146, respectively	4,933	(274)
Comprehensive income (loss)	$(21,061)	$ 786

Changes in foreign currencies, particularly the British pound and Euro, can have a significant impact to the Company's consolidated balance sheets (as evidenced above in the Company's foreign currency translation gain or loss), as well as its consolidated results of operations, as amounts in foreign currencies are generally translating into more U.S. dollars when the U.S. dollar weakens or less U.S. dollars when the U.S. dollar strengthens.

9. Segment Information

While the Company has a single line of business, which is the design, build-out and operation of IBX data centers, it has determined that it has three reportable segments comprised of its U.S., Europe and Asia-Pacific geographic regions. The Company's chief operating decision-maker evaluates performance, makes operating decisions and allocates resources based on the Company's revenue and adjusted EBITDA performance both on a consolidated basis and based on these three geographic regions.

The Company provides the following segment disclosures as follows (in thousands):

	Three months ended March 31,	
	2010	2009
Total revenues:		
United States	$148,556	$ 124,894
Europe	64,164	47,800
Asia-Pacific	35,929	26,537
	$248,649	$ 199,231
Total depreciation and amortization:		
United States	$ 27,866	$ 25,849
Europe	14,353	9,565
Asia-Pacific	6,470	6,262
	$ 48,689	$ 41,676
Income from operations:		
United States	$ 29,601	$ 33,941
Europe	8,321	5,426
Asia-Pacific	10,060	4,339
	$ 47,982	$ 43,706
Capital expenditures:		
United States	$ 95,966	$ 76,099
Europe	39,844	19,881
Asia-Pacific	7,590	12,861
	$143,400	$ 108,841

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

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

	March 31, 2010	December 31, 2009
United States	$ 1,185,923	$ 1,130,637
Europe	499,807	493,492
Asia-Pacific	188,595	183,986
	$ 1,874,325	$ 1,808,115

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

	Three months ended March 31,	
	2010	2009
Colocation	$200,359	$ 157,484
Interconnection	29,232	25,197
Managed infrastructure	7,300	7,377
Rental	345	264
Recurring revenues	237,236	190,322
Non-recurring revenues	11,413	8,909
	$248,649	$ 199,231

No single customer accounted for 10% or greater of the Company's revenues for the three months ended March 31, 2010 and 2009. No single customer accounted for 10% or greater of the Company's gross accounts receivable as of March 31, 2010 and December 31, 2009.

10. Restructuring Charges

A summary of the movement in the 2004 accrued restructuring charges from December 31, 2009 to March 31, 2010 is outlined as follows (in thousands):

	Accrued restructuring charge as of December 31, 2009	Accretion expense	Cash payments	Accrued restructuring charge as of March 31, 2010
Estimated lease exit costs	$ 5,919	$ 87	$ (411)	$ 5,595
	5,919	$ 87	$ (411)	5,595
Less current portion	(2,403)			(1,903)
	$ 3,876			$ 3,692

As the Company currently has no plans to enter into a lease termination with the landlord associated with the excess space lease in the New York metro area, the Company has reflected its accrued restructuring liability as both a current and non-current liability. The Company reports accrued restructuring charges within other current liabilities and other liabilities on the accompanying consolidated balance sheets as of March 31, 2010 and December 31, 2009. The Company is contractually committed to this excess space lease through 2015.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

11. Subsequent Events

On April 23, 2010, the Company received notification from the DOJ that the DOJ has closed its investigation with respect to the Switch and Data Acquisition and also received notification from the Federal Trade Commission that the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 has been terminated. The Company expects the Switch and Data Acquisition to close on April 30, 2010, subject to the satisfaction or waiver of the other closing conditions set forth in the merger agreement (see Note 1).

In April 2010, the Company prepaid and terminated the European Financing, of which principal of $122,555,000 was outstanding as of March 31, 2010 plus accrued and unpaid interest. At the same time, the Company paid and terminated the interest rate swaps associated with the European Financing (see Note 4), of which a derivative liability of $4,257,000 was outstanding as of March 31, 2010.

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.

Our management's discussion and analysis of financial condition and results of operations is intended to assist readers in understanding our financial information from our management's perspective and is presented as follows:

- Overview
- Results of Operations
- Non-GAAP Financial Measures
- Liquidity and Capital Resources
- Contractual Obligations and Off-Balance-Sheet Arrangements
- Critical Accounting Policies and Estimates
- Recent Accounting Pronouncements

In October 2009, as more fully described in Note 1 of Notes to Condensed Consolidated Financial Statements in Item 1 of this Quarterly Report on Form 10-Q, we announced that we had entered into an agreement to acquire Switch and Data, which operates 34 data centers in the U.S. and Canada. We refer to this transaction as the Switch and Data acquisition. On April 23, 2010, we received notification from the United States Department of Justice that it has closed its investigation with respect to the Switch and Data acquisition and also received notification from the Federal Trade Commission that the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 has been terminated. The Switch and Data acquisition, which we expect to close on April 30, 2010, subject to the satisfaction or waiver of the other closing conditions set forth in the merger agreement, will have a significant impact on our financial position, results of operations and cash flows.

In February 2010, we issued $750.0 million aggregate principal amount of 8.125% senior notes due March 1, 2018, which is referred to as the senior notes offering. We intend to use the net proceeds from this offering for general corporate purposes, including the funding of our expansion activities and the repayment of indebtedness.

Overview

Equinix provides global data center services that protect and connect the word's most valued information assets. Global enterprises, financial services companies, and content and network service providers rely upon Equinix's leading insight and our 51 data centers in 19 markets around the world for the safeguarding of their critical IT equipment and the ability to directly connect to the networks that enable today's information-driven economy. Equinix offers the following data center services: premium data center colocation, interconnection and exchange services, and outsourced IT infrastructure services. As of March 31, 2010, we operated IBX data centers in the Chicago, Dallas, Los Angeles, New York, Silicon Valley and Washington, D.C. metro areas in the United States; France, Germany, the Netherlands, Switzerland and the United Kingdom in Europe; and Australia, Hong Kong, Japan and Singapore in Asia-Pacific.

We leverage our global data centers in 19 markets around the world as a global service delivery platform which serves more than 90% of the world's Internet routes and allows our customers to increase information and application delivery performance while significantly reducing costs. Based on our global delivery platform and the quality of our IBX data centers, we believe we have established a critical mass of customers. As more customers locate in our IBX data centers, it benefits their suppliers and business partners to colocate as well in order to gain the full economic and performance benefits of our services. These partners, in turn, pull in their business partners, creating a "marketplace" for their services. Our global delivery platform enables scalable, reliable and cost-effective colocation, 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 "marketplace" effect. This global delivery platform, combined with our strong financial position, continues to drive new customer growth and bookings as we drive scale into our global business.

Historically, our market has been served by large telecommunications carriers who have bundled their telecommunications products and services with their colocation offerings. The data center services market landscape has evolved to include cloud computing/utility providers, application hosting providers and systems integrators, managed infrastructure hosting providers and colocation providers with over 350 companies providing data center services in the United States alone. Each of these data center services providers can bundle various colocation, interconnection and network services, and outsourced IT infrastructure services. We are able to offer our customers a global platform that supports global reach to 10 countries, proven operational reliability, improved application performance and network choice, and a highly scalable set of services.

Our customer count increased to 2,757 as of March 31, 2010 versus 2,348 as of March 31, 2009, an increase of 17%. Our utilization rate represents the percentage of our cabinet space billing versus net sellable cabinet space available taking into account power limitations. Our utilization rate decreased to 76% as of March 31, 2010 versus approximately 80% as of March 31, 2009; however, excluding the impact of our IBX data center expansion projects that have opened during the last 12 months, our utilization rate would have increased to approximately 84% as of March 31, 2010. Our utilization rate varies from market to market among our IBX data centers across the U.S., Europe and Asia-Pacific regions. 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. We perform demand studies on an ongoing basis to determine if future expansion is warranted in a market. In addition, power and cooling requirements for most 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 power our customers draw 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 data centers to support power and cooling needs twice that of previous IBX data centers. We could face power limitations in our centers even though we may have additional physical cabinet capacity available within a specific IBX data 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.

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 recent announcement of our agreement to acquire Switch and Data. As was the case with our recent expansions and acquisitions, our expansion criteria will be dependent on a number of factors such as demand from new and existing customers, quality of the design, power capacity, access to networks, capacity availability in the 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 and acquisitions, the right combination of these factors may be attractive to us. Depending on the circumstances, these transactions may require additional capital expenditures funded by upfront cash payments or through long-term financing arrangements, in order to bring these properties up to Equinix standards. Property expansion may be in the form of purchases of real property, long-term leasing arrangements or acquisitions. Future purchases, construction or acquisitions 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 generally 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 have comprised more than 90% of our total revenues during the past three years and during the past three years, in any given quarter, greater than half of our monthly recurring revenue bookings came from existing customers, contributing to our revenue growth.

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 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. However, revenues from installation services are deferred and recognized ratably over the longer of the term of the related contract or expected life of the services. As a percentage of total revenues, we expect non-recurring revenues to represent less than 10% of total revenues for the foreseeable future.

Our U.S. revenues are derived primarily from colocation and interconnection services while our Europe and Asia-Pacific revenues are derived primarily from colocation and managed infrastructure services.

The largest components of our cost of revenues are depreciation, rental payments related to our leased IBX data centers, utility costs, including electricity and bandwidth, IBX data center employees' salaries and benefits, including stock-based compensation, repairs and maintenance, 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, unless we expand our existing IBX data centers or open or acquire new IBX data centers. However, there are certain costs which are considered more variable in nature, including utilities and supplies, that are directly related to growth in our existing and new customer base. We expect the cost of our utilities, specifically electricity, will increase in the future on a per-unit or fixed basis in addition to the variable increase related to the growth in consumption by the customer. In addition, the cost of electricity is generally higher in the summer months as compared to other times of the year. To the extent we incur increased utility costs, such increased costs could materially impact our financial condition, results of operations and cash flows. Furthermore, to the extent we incur increased electricity costs as a result of either climate change policies or the physical effects of climate change, such increased costs could materially impact our financial condition, results of operations and cash flows

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, as well as bad debt expense and amortization of customer contract intangible assets.

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

Due to our recurring revenue model, and a cost structure which has a large base that is fixed in nature and generally does not grow in proportion to revenue growth, we expect our cost of revenues, sales and marketing expenses and general and administrative expenses to decline as a percentage of revenue over time, although we expect each of them to grow in absolute dollars in connection with our growth. This is evident in the trends noted below in our discussion on our results of operations. However, for cost of revenues, this trend may periodically be impacted when a large expansion project opens or is acquired and before it starts generating any meaningful revenue. Furthermore, in relation to cost of revenues, we note that the U.S. region has a lower cost of revenues as a percentage of revenue than either Europe or Asia-Pacific. This is due to both the increased scale and maturity of the U.S. region compared to either Europe or Asia-Pacific, as well as a higher cost structure outside of the U.S., particularly in Europe. While we expect all three regions to continue to see lower cost of revenues as a percentage of revenues in future periods, we expect the trend of the U.S. having the lowest cost of revenues as a percentage of revenue and Europe having the highest to continue. As a result, to the extent that revenue growth outside the U.S. grows in greater proportion than revenue growth in the U.S., our overall cost of revenues as a percentage of revenues may increase slightly in future periods. Sales and marketing expenses and general and administrative expenses may also periodically increase as a percentage of revenue as we continue to scale our operations to support our growth.

Results of Operations

Three Months Ended March 31, 2010 and 2009

Revenues. Our revenues for the three months ended March 31, 2010 and 2009 were generated from the following revenue classifications and geographic regions (dollars in thousands):

	Three months ended March 31,				Change	
	2010	%	2009	%	$	%
U.S:						
Recurring revenues	$143,417	58%	$120,161	60%	$23,256	19%
Non-recurring revenues	5,139	2%	4,733	3%	406	9%
	148,556	60%	124,894	63%	23,662	19%
Europe:						
Recurring revenues	59,445	24%	44,875	23%	14,570	32%
Non-recurring revenues	4,719	2%	2,925	1%	1,794	61%
	64,164	26%	47,800	24%	16,364	34%
Asia-Pacific:						
Recurring revenues	34,374	13%	25,286	12%	9,088	36%
Non-recurring revenues	1,555	1%	1,251	1%	304	24%
	35,929	14%	26,537	13%	9,392	35%
Total:						
Recurring revenues	237,236	95%	190,322	96%	46,914	25%
Non-recurring revenues	11,413	5%	8,909	4%	2,504	28%
	$248,649	100%	$199,231	100%	$49,418	25%

U.S. Revenues. 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 during the period as reflected in the growth in our customer count and utilization rate, as discussed above, in both our new and existing IBX data centers, as well as selective price increases in each of our IBX markets. During the three months ended March 31, 2010, we recorded $7.8 million of revenue generated from our recently-opened IBX data centers or IBX data center expansions in the Chicago, Los Angeles and New York metro areas. We expect that our U.S. revenues will continue to grow in future periods as a result of continued growth in these recently-opened IBX data centers or IBX data center expansions and additional expansions currently taking place in the Dallas, New York, Silicon Valley and Washington, D.C. metro areas, which are expected to open during the remainder of 2010 and first quarter of 2011.

Europe Revenues. During the three months ended March 31, 2010, our revenues from Germany, the largest revenue contributor in the Europe region for the period, represented approximately 37% of the regional revenues. During the three months ended March 31, 2009, our revenues from the United Kingdom, the largest revenue contributor in the Europe region for the period, represented approximately 36% of the regional revenues. As in the U.S., Europe revenue growth was due to an increase in orders from both our existing customers and new customers during the period as reflected in the growth in our customer count and utilization rate, as discussed above, in both our new and existing IBX data centers. During the three months ended March 31, 2010, we recorded approximately $6.3 million of revenue from our recently-opened IBX data centers or IBX data center expansions in the Dusseldorf, Frankfurt, Geneva and Paris metro areas. We expect that our Europe revenues will continue to grow in future periods as a result of continued growth in recently-opened IBX data centers or IBX data center expansions and additional expansions currently taking place in the Amsterdam, Frankfurt, London and Zurich metro areas, which are expected to open during the remainder of 2010.

Asia-Pacific Revenues. Our revenues from Singapore, the largest revenue contributor in the Asia-Pacific region, represented approximately 37% and 36%, respectively, of the regional revenues for the three months ended March 31, 2010 and 2009. As in the U.S., Asia-Pacific revenue growth was due to an increase in orders from both our existing customers and new customers during the period as reflected in the growth in our customer count and utilization rate, as discussed above, in both our new and existing IBX data centers. During the three months ended March 31, 2010, we recorded approximately $2.2 million of revenue generated from our IBX center expansions in the Hong Kong and Singapore metro areas. We expect that our Asia-Pacific revenues will continue to grow in future periods as a result of continued growth in these recently-opened IBX center expansions and additional expansions currently taking place in the Hong Kong and Singapore metro areas which are expected to open during the remainder of 2010.

Cost of Revenues. Our cost of revenues for the three months ended March 31, 2010 and 2009 were split among the following geographic regions (dollars in thousands):

	Three months ended March 31,				Change	
	2010	%	2009	%	$	%
U.S.	$ 72,073	54%	$ 63,811	57%	$ 8,262	13%
Europe	41,832	32%	31,842	29%	9,990	31%
Asia-Pacific	19,145	14%	16,152	14%	2,993	19%
Total	$133,050	100%	$111,805	100%	$21,245	19%

	Three months ended March 31,	
	2010	2009
Cost of revenues as a percentage of revenues:		
U.S.	49%	51%
Europe	65%	67%
Asia-Pacific	53%	61%
Total	54%	56%

U.S. Cost of Revenues. U.S. cost of revenues for the three months ended March 31, 2010 and 2009 included $26.4 million and $24.2 million, respectively, of depreciation expense. Growth in depreciation expense was due to our IBX center expansion activity; however, this growth was partially offset by a $2.3 million decrease in depreciation expense as we revised the estimated useful lives of certain of our property, plant and equipment during the three months ended September 30, 2009. Excluding depreciation, the increase in U.S. cost of revenues was primarily due to overall growth related to our revenue growth and costs associated with our expansion projects, including (i) an increase of $2.1 million in rent and facility costs, (ii) an increase of $1.5 million in utility costs as a result of increased customer installations and (iii) $1.1 million in higher compensation costs, including general salaries, bonuses, stock-based compensation and headcount growth (314 U.S. employees as of March 31, 2010 versus 290 as of March 31, 2009). We expect U.S. cost of revenues to increase as we continue to grow our business.

Europe Cost of Revenues. Europe cost of revenues for the three months ended March 31, 2010 and 2009 included $12.9 million and $8.1 million, respectively, of depreciation expense. Growth in depreciation expense was primarily due to our IBX center expansion activity; however, this growth was partially offset by a $265,000 decrease in depreciation expense as we revised the estimated useful lives of certain of our property, plant and equipment during the three months ended September 30, 2009. Excluding depreciation expense, the increase in Europe cost of revenues was primarily the result of costs associated with our expansion projects and overall growth in costs to support our revenue growth, such as (i) an increase of $1.8 million of utility costs arising from increased customer installations and revenues attributed to customer growth and (ii) $1.4 million of higher rent and facility costs. We expect Europe cost of revenues to increase as we continue to grow our business.

Asia-Pacific Cost of Revenues. Asia-Pacific cost of revenues for the three months ended March 31, 2010 and 2009 included $6.3 million and $6.1 million, respectively, of depreciation expense. Growth in depreciation expense was primarily due to our IBX center expansion activity; however, this growth was partially offset by a $2.2 million decrease in depreciation expense as we revised the estimated useful lives of certain of our property, plant and equipment during the three months ended September 30, 2009. Excluding depreciation expense, the increase in Asia-Pacific cost of revenues was primarily the result of costs associated with our expansion projects and overall growth in costs to support our revenue growth. We expect Asia-Pacific cost of revenues to increase as we continue to grow our business.

Sales and Marketing Expenses. Our sales and marketing expenses for the three months ended March 31, 2010 and 2009 were split among the following geographic regions (dollars in thousands):

	Three months ended March 31,				Change	
	2010	%	2009	%	$	%
U.S.	$11,952	61%	$ 8,134	57%	$3,818	47%
Europe	4,991	26%	3,934	27%	1,057	27%
Asia-Pacific	2,525	13%	2,335	16%	190	8%
Total	$19,468	100%	$14,403	100%	$5,065	35%

	Three months ended March 31,	
	2010	2009
Sales and marketing expenses as a percentage of revenues:		
U.S.	8%	7%
Europe	8%	8%
Asia-Pacific	7%	9%
Total	8%	7%

U.S. Sales and Marketing Expenses. The increase in our U.S. sales and marketing expenses was primarily due to $2.5 million of higher compensation costs, including sales compensation, general salaries, bonuses, stock-based compensation expense and headcount growth (125 U.S. sales and marketing employees as of March 31, 2010 versus 101 as of March 31, 2009). Going forward, although we are carefully monitoring our spending given the current economic environment, we generally expect U.S. sales and marketing expenses to increase as we continue to grow our business and invest further in various branding initiatives; however, as a percentage of revenues, we generally expect them to decrease. However, we have decided to invest further in our U.S. sales and marketing team in 2010 including anticipated headcount growth and new product innovation efforts and, as a result, this trend will be temporarily impacted.

Europe Sales and Marketing Expenses. The increase in our Europe sales and marketing expenses was primarily due to higher compensation costs, including sales compensation, general salaries, bonuses and stock-based compensation expense. Going forward, although we are carefully monitoring our spending given the current economic environment, we generally expect Europe sales and marketing expenses to increase as we continue to grow our business; however, as a percentage of revenues, we generally expect them to decrease.

Asia-Pacific Sales and Marketing Expenses. Our Asia-Pacific sales and marketing expenses did not change significantly; however, our Asia-Pacific sales and marketing expenses for the three months ended March 31, 2010 included the benefit of a $680,000 accrual reversal associated with adjusting the estimated costs of an annual sales recognition program which is an out-of-period adjustment. This $680,000 out-of-period adjustment represents the correction of errors attributable to the year ended December 31, 2009, which we have concluded was not material to any previously-reported historical annual or quarterly period for the year ended December 31, 2009. Going forward, although we are carefully monitoring our spending given the current economic environment, we expect Asia-Pacific sales and marketing expenses to increase as we continue to grow our business; however, as a percentage of revenues, we generally expect them to decrease.

General and Administrative Expenses. Our general and administrative expenses for the three months ended March 31, 2010 and 2009 were split among the following geographic regions (dollars in thousands):

	Three months ended March 31,				Change	
	2010	%	2009	%	$	%
U.S.	$29,936	69%	$24,841	71%	$5,095	21%
Europe	9,020	21%	6,598	19%	2,422	37%
Asia-Pacific	4,199	10%	3,711	10%	488	13%
Total	$43,155	100%	$35,150	100%	$8,005	23%

	Three months ended March 31,	
	2010	2009
General and administrative expenses as a percentage of revenues:		
U.S.	20%	20%
Europe	14%	14%
Asia-Pacific	12%	14%
Total	17%	18%

U.S. General and Administrative Expenses. The increase in our U.S. general and administrative expenses was primarily due to $4.6 million of higher compensation costs, including general salaries, bonuses, stock-based compensation and headcount growth (320 U.S. general and administrative employees as of March 31, 2010 versus 278 as of March 31, 2009). Going forward, although we are carefully monitoring our spending given the current economic environment, we expect U.S. general and administrative expenses to increase as we continue to scale our operations to support our growth; however, as a percentage of revenues, we generally expect them to decrease.

Europe General and Administrative Expenses. The increase in our Europe general and administrative expenses was primarily due to $1.3 million of higher compensation costs, including general salaries, bonuses, stock-based compensation and headcount growth (160 Europe general and administrative employees as of March 31, 2010 versus 87 as of March 31, 2009). This growth in compensation costs was partially offset by a $1.2 million accrual reversal recorded during the three months ended March 31, 2010 associated with our annual bonus plan as a result of paying out less than originally anticipated. Going forward, although we are carefully monitoring our spending given the current economic environment, we expect our Europe general and administrative expenses to increase in future periods as we continue to scale our operations to support our growth; however, as a percentage of revenues, we generally expect them to decrease.

Asia-Pacific General and Administrative Expenses. The increase in our Asia-Pacific general and administrative expenses was primarily due to higher compensation costs. Going forward, although we are carefully monitoring our spending given the current economic environment, we expect Asia-Pacific general and administrative expenses to increase as we continue to scale our operations to support our growth; however, as a percentage of revenues, we generally expect them to decrease.

Acquisition Costs. During the three months ended March 31, 2010, we recorded acquisition costs totaling $5.0 million, primarily related to the agreement to acquire Switch and Data. During the three months ended March 31, 2009, we did not record any acquisition costs. We expect our acquisition costs to remain significant during the second quarter of 2010 as we incur additional expenses to complete the Switch and Data acquisition.

Restructuring Charges. We did not record any restructuring charge for the three months ended March 31, 2010. During the three months ended March 31, 2009, we recorded a reversal of a restructuring charge accrual of $5.8 million for our excess space in the Los Angeles metro area as a result of our decision to utilize this space to expand our original Los Angeles IBX center. Our excess space lease in the New York metro area remains abandoned and continues to carry a restructuring charge.

Interest Income. Interest income decreased to $506,000 for the three months ended March 31, 2010 from $916,000 for the three months ended March 31, 2009. Interest income decreased primarily due to lower yields on invested balances. The average yield for the three months ended March 31, 2010 was 0.19% versus 0.87% for the three months ended March 31, 2009. We expect our interest income to remain at these low levels for the foreseeable future due to the impact of a lower interest rate environment, a portfolio more weighted towards short-term U.S. treasuries, and from the utilization of cash to finance our expansion activities.

Interest Expense. Interest expense increased to $25.7 million for the three months ended March 31, 2010 from $13.5 million for the three months ended March 31, 2009. This increase in interest expense was primarily due to additional financings entered into during 2009 and 2010 consisting of (i) our $750.0 million 8.125% senior notes offering in February 2010, (ii) our $373.8 million 4.75% convertible subordinated notes offering in June 2009 and (iii) our Singapore financing in September 2009, of which $24.7 million was outstanding as of March 31, 2010 with an approximate interest rate of 4.0% per annum. During the three months ended March 31, 2010 and 2009, we capitalized $3.7 million and $4.0 million, respectively, of interest expense to construction in progress. Going forward, we expect to incur higher interest expense as we recognize the full impact of our $750.0 million 8.125% senior notes offering, although this will be partially offset by repayment of debt, such as the Chicago IBX financing in March 2010 and the European financing in April 2010, and capitalized interest, which we expect to increase during the remainder of 2010 as we intend to embark on more expansion projects. We may also incur additional indebtedness to support our growth, resulting in further interest expense, such as our new Asia-Pacific financing that we expect to close in the second quarter of 2010.

Other-Than-Temporary Impairment Recovery (Loss) On Investments. For the three months ended March 31, 2010, we recorded a $3.4 million recovery of other-than-temporary impairment loss on investments due to an additional distribution from one of our money market accounts as more fully described in Note 2 of Notes to Condensed Consolidated Financial Statements in Item 1 of this Quarterly Report on Form 10-Q. During the three months ended March 31, 2009, we recorded $2.7 million of other-than-temporary impairment loss on this same money market account.

Loss on debt extinguishment and interest rate swaps, net. During the three months ended March 31, 2010, we recorded a $3.4 million loss on debt extinguishment and interest rate swaps, net, which is comprised of (i) a net gain of $4.0 million representing principal discount and the write-off of related debt issuance costs and (ii) a loss of $7.4 million from the termination of an interest rate swap associated with the Chicago IBX financing as a result of repaying and terminating the Chicago IBX financing in March 2010 and the write-off of interest rate swaps associated with the European financing due to these interest rate swaps no longer being effective hedges as a result of repaying and terminating the European financing in April 2010.

Other Income (Expense). For the three months ended March 31, 2010, we recorded $20,000 of other income, primarily due to foreign currency exchange gains during the period. For the three months ended March 31, 2009, we recorded $1.4 million of other expense, primarily due to foreign currency exchange losses during the period.

Income Taxes. For the three months ended March 31, 2010 and 2009, we recorded $8.7 million and $11.6 million, respectively, of income tax expense. Our effective tax rates were 37.9% and 42.9% for the three months ended March 31, 2010 and 2009, respectively. We expect cash income taxes during the remainder of 2010 to be significantly lower than income tax expense for the year because we still have a large amount of net operating loss carry-forwards in most of the jurisdictions in which we operate, which can be used to offset the taxable profit generated in 2010. The cash tax for 2010 is primarily for the U.S. Alternative Minimum Tax and foreign income taxes, while cash tax for 2009 was primarily for the U.S. Alternative Minimum Tax, the California state income tax and foreign income taxes.

Non-GAAP Financial Measures

We provide all information required in accordance with generally accepted accounting principles (GAAP), but we believe that evaluating our ongoing operating results may be difficult if limited to reviewing only GAAP financial measures. Accordingly, we use non-GAAP financial measures, primarily adjusted EBITDA, to evaluate our operations. In presenting adjusted EBITDA, we exclude certain items that we believe are not good indicators of our current or future operating performance. These items are depreciation, amortization, accretion of asset retirement obligations and accrued restructuring charges, stock-based compensation, restructuring charges and acquisition costs. Legislative and regulatory requirements encourage the use of and emphasis on GAAP financial metrics and require companies to explain why non-GAAP financial metrics are relevant to management and investors. We exclude these items in order for our lenders, investors, and industry analysts, who review and report on us, to better evaluate our operating performance and cash spending levels relative to our industry sector and competitors.

For example, we exclude depreciation expense as these charges primarily relate to the initial construction costs of our IBX data centers and do not reflect our current or future cash spending levels to support our business. Our IBX data centers are long-lived assets, and have an economic life greater than 10 years. The construction costs of our IBX data centers do not recur and future capital expenditures remain minor relative to our initial investment. This is a trend we expect to continue. In addition, depreciation is also based on the estimated useful lives of our IBX data centers. These estimates could vary from actual performance of the asset, are based on historical costs incurred to build out our IBX data centers, and are not indicative of current or expected future capital expenditures. Therefore, we exclude depreciation from our operating results when evaluating our operations.

In addition, in presenting the non-GAAP financial measures, we exclude amortization expense related to certain intangible assets, as it represents a cost that may not recur and is not a good indicator of our current or future operating performance. We exclude accretion expense, both as it relates to asset retirement obligations as well as accrued restructuring charge liabilities, as these expenses represent costs which we believe are not meaningful in evaluating our current operations. We exclude non-cash stock-based compensation expense as it represents expense attributed to equity awards that have no current or future cash obligations. As such, we, and many investors and analysts, exclude this stock-based compensation expense when assessing the cash generating performance of our operations. We also exclude restructuring charges from our non-GAAP financial measures. The restructuring charges relate to our decisions to exit leases for excess space adjacent to several of our IBX data centers, which we did not intend to build out, or our decision to reverse such restructuring charges. Finally, we also exclude acquisition costs from our non-GAAP financial measures. The acquisition costs relate to costs we incur in connection with business combinations. Management believes such items as restructuring charges and acquisition costs are non-core transactions; however, these types of costs will or may occur in future periods.

Our management does not itself, nor does it suggest that investors should, consider such non-GAAP financial measures in isolation from, or as a substitute for, financial information prepared in accordance with GAAP. However, we have presented such non-GAAP financial measures to provide investors with an additional tool to evaluate our operating results in a manner that focuses on what management believes to be our core, ongoing business operations. We believe that the inclusion of this non-GAAP financial measure provides consistency and comparability with past reports and provides a better understanding of the overall performance of the business and its ability to perform in subsequent periods. We believe that if we did not provide such non-GAAP financial information, investors would not have all the necessary data to analyze Equinix effectively.

Investors should note, however, that the non-GAAP financial measures used by us may not be the same non-GAAP financial measures, and may not be calculated in the same manner, as that of other companies. In addition, whenever we use non-GAAP financial measures, we provide a reconciliation of the non-GAAP financial measure to the most closely applicable GAAP financial measure. Investors are encouraged to review the related GAAP financial measures and the reconciliation of these non-GAAP financial measures to their most directly comparable GAAP financial measure.

We define adjusted EBITDA as income or loss from operations plus depreciation, amortization, accretion, stock-based compensation expense, restructuring charges and acquisition costs as presented below (dollars in thousands):

	Three months ended March 31,	
	2010	2009
Income from operations	$ 47,982	$43,706
Depreciation, amortization and accretion expense	49,322	41,967
Stock-based compensation expense	14,974	11,538
Restructuring charges	—	(5,833)
Acquisitions costs	4,994	—
Adjusted EBITDA	$117,272	$91,378

The geographic split of our adjusted EBITDA is presented below (dollars in thousands):

	Three months ended March 31,	
	2010	2009
U.S.:		
Income from operations	$29,601	$33,941
Depreciation, amortization and accretion expense	28,174	26,039
Stock-based compensation expense	11,013	8,816
Restructuring charges	—	(5,833)
Acquisitions costs	4,994	—
Adjusted EBITDA	$73,782	$62,963
Europe:		
Income from operations	$ 8,321	$ 5,426
Depreciation, amortization and accretion expense	14,484	9,601
Stock-based compensation expense	2,150	1,352
Adjusted EBITDA	$24,955	$16,379
Asia-Pacific:		
Income from operations	$10,060	$ 4,339
Depreciation, amortization and accretion expense	6,664	6,327
Stock-based compensation expense	1,811	1,370
Adjusted EBITDA	$18,535	$12,036

Our adjusted EBITDA results have improved each year and in each region due to the improved operating results discussed earlier in “Results of Operations”, as well as the nature of our business model consisting of a recurring revenue stream and a cost structure which has a large base that is fixed in nature that is also discussed earlier in “Overview”. We believe that our adjusted EBITDA results will continue to improve in future periods as we continue to grow our business.

Liquidity and Capital Resources

As of March 31, 2010, our total indebtedness was comprised of (i) convertible debt principal totaling $1.0 billion from our 2.50% convertible subordinated notes (gross of discount), our 3.00% convertible subordinated notes, and our 4.75% convertible subordinated notes (gross of discount) and (ii) non-convertible debt and financing obligations totaling $1.2 billion consisting of (a) $750.0 million of principal from our senior notes, (b) $303.9 million of principal from our mortgage and loans payable and (c) $158.7 million from capital lease and other financing obligations.

We believe we have sufficient cash, coupled with anticipated cash generated from operating activities, to meet our operating requirements, including repayment of our current portion of debt due, and to complete our publicly-announced expansion projects, as well as the Switch and Data acquisition, of which 20% of the total purchase price is payable in cash, for at least the next 12 months. As of March 31, 2010, we had $1.2 billion of cash, cash equivalents and short-term and long-term investments; however, of this amount, a total of $81.8 million resides in certain European subsidiaries where the use of such cash is currently limited to their general working capital needs or repaying the European financing. Besides our investment portfolio and any financing activities we may pursue, customer collections are our primary source of cash. While we believe we have a strong customer base and have continued to experience relatively strong collections, if the current market conditions were to deteriorate further, some of our customers may have difficulty paying us and we may experience increased churn in our customer base, including reductions in their commitments to us, all of which could have a material adverse effect on our liquidity.

As of March 31, 2010, we had a total of approximately $13.7 million of additional liquidity available to us, which consists of (i) $8.9 million under the $25.0 million Bank of America revolving credit line, (ii) $3.0 million under the European financing and (iii) $1.8 million under the Singapore financing. Our indebtedness as of March 31, 2010, as noted above, included $1.2 billion of non-convertible senior debt. Although these are committed facilities, most of which are fully drawn or utilized and for which we are amortizing debt repayments of either principal and/or interest only, and we are in full compliance with all covenants related to them effective March 31, 2010, deteriorating market and liquidity conditions may give rise to issues which may impact the lenders' ability to hold these debt commitments to their full term.

While we believe we have sufficient liquidity and capital resources to meet our current operating requirements and to complete our publicly-announced IBX expansion plans and the Switch and Data acquisition, we may pursue additional expansion opportunities, primarily the build-out of new IBX data centers, in certain of our existing markets which are at or near capacity within the next year, as well as potential acquisitions. While we will be able to fund some of these expansion plans with our existing resources, additional financing, either debt or equity, may be required to pursue certain of these additional expansion plans. However, if current market conditions were to deteriorate further, we may be unable to secure additional financing or any such additional financing may be available to us on unfavorable terms. An inability to pursue additional expansion opportunities will have a material adverse effect on our ability to maintain our desired level of revenue growth in future periods.

Sources and Uses of Cash

	Three Months Ended March 31,	
	2010	2009
	(in thousands)	
Net cash provided by operating activities	$ 99,812	$ 86,704
Net cash used in investing activities	(31,557)	(77,885)
Net cash provided by (used in) financing activities	629,796	(3,625)

Operating Activities. The increase in net cash provided by operating activities was primarily due to improved operating results as discussed above, management of vendor payments and timing of interest payments. We expect that we will continue to generate cash from our operating activities during the remainder of 2010 and beyond.

Investing Activities. The decrease in net cash used in investing activities during the three months ended March 31, 2010 was primarily due to cash proceeds from investments that matured during the period, partially offset by higher capital expenditures. During the three months ended March 31, 2010 and 2009, these capital expenditures were $143.4 million and $108.8 million, respectively. We expect that our IBX expansion construction activity will be at consistent levels. However, if the opportunity to expand is greater than planned and we have sufficient funding to increase the expansion opportunities available to us, we may increase the level of capital expenditures to support this growth.

Financing Activities. Net cash provided by financing activities during the three months ended March 31, 2010 was primarily due to our $750.0 million 8.125% senior notes offering in February 2010, partially offset by repayment of our debt facilities, including the Chicago IBX financing. Net cash used in financing activities during the three months ended March 31, 2009 was primarily due to repayment of our debt facilities, partially offset by proceeds from our employee equity awards. We expect that, unless we are successful in obtaining new financing, such as our new Asia-Pacific financing that we anticipate closing in the second quarter of 2010, our financing activities will consist primarily of repayment of our debt during the remainder of 2010, including the European financing in April 2010.

Debt Obligations

Senior Notes. In February 2010, we issued $750.0 million aggregate principal amount of 8.125% senior notes due March 1, 2018, which is referred to as the senior notes. Interest is payable semi-annually on March 1 and September 1 of each year, commencing on September 1, 2010.

The senior notes are unsecured and rank equal in right of payment to our existing or future senior debt and senior in right of payment to our existing and future subordinated debt. The senior notes will be effectively junior to any of our existing and future secured indebtedness and any indebtedness of our subsidiaries.

At any time prior to March 1, 2013, we may on any one or more occasions redeem up to 35% of the aggregate principal amount of the senior notes outstanding at a redemption price equal to 108.125% of the principal amount of the senior notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more equity offerings, provided that (i) at least 65% of the aggregate principal amount of the senior notes remains outstanding immediately after the occurrence of such redemption and (ii) the redemption must occur within 90 days of the date of the closing of such equity offerings. On or after March 1, 2014, we may redeem all or a part of the 8.125% senior notes, on any one or more occasions, at the redemption prices set forth below plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date, if redeemed during the one-year period beginning on March 1 of the years indicated below:

	Redemption price of the senior notes
2014	104.0625%
2015	102.0313%
2016 and thereafter	100.0000%

At any time prior to March 1, 2014, we may also redeem all or a part of the senior notes at a redemption price equal to 100% of the principal amount of the senior notes redeemed plus applicable premium plus accrued and unpaid interest, if any, to, but not including, the date of redemption.

Upon a change in control, we will be required to make an offer to purchase each holder's senior notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.

Debt issuance costs related to the senior notes were, net of amortization, $14.4 million as of March 31, 2010.

New Asia-Pacific Financing. In March 2010, our five wholly-owned subsidiaries, located in Australia, Hong Kong, Japan and Singapore, entered into an agreement to enter into a new multi-currency credit facility agreement for approximately $170.0 million. We refer to this transaction as the new Asia-Pacific financing. The new Asia-Pacific financing will replace our currently outstanding Asia-Pacific financing and Singapore financing when completed. The new Asia-Pacific financing will have a five-year term and consist of two tranches: (i) Tranche A will be available for immediate drawing upon satisfaction of certain conditions precedent and will be used to refinance the existing Asia-Pacific financing and Singapore financing and (ii) Tranche B will be available to draw upon for up to 24 months following the effective date of the new Asia-Pacific financing. The new Asia Pacific financing will bear an interest rate of 3.50% above the local borrowing rates for the first 12 months and an interest rate of 2.50% above the local borrowing rates thereafter depending on the leverage ratio within our five subsidiaries. The new Asia-Pacific financing will contain financial covenants with which we must comply quarterly. The new Asia-Pacific financing will be guaranteed by us and will be secured by certain of our five subsidiaries' assets and share pledges. We currently anticipate closing the new Asia-Pacific financing in the second quarter of 2010.

Chicago IBX Financing. In March 2010, we prepaid and terminated the Chicago IBX financing, of which principal of $110.0 million was outstanding as of December 31, 2009. The Chicago IBX financing was prepaid to the lender for an amount equal to 95.909% of the then outstanding principal balance outstanding, plus accrued and unpaid interest, resulting in a gain of $4.5 million. On the same date, we paid and terminated the interest rate swap associated with the Chicago IBX financing totaling $3.2 million.

$25.0 Million Bank of America Revolving Credit Line. In February 2010, we amended the $25.0 million Bank of America revolving credit line and extended the maturity date to February 11, 2011. In addition, the $25.0 million Bank of America revolving credit line was amended to permit us to fund the cash payment portion of the pending acquisition of Switch and Data and to repay or retire its outstanding loan obligations upon the closing of the Switch and Data acquisition. The $25.0 million Bank of America revolving credit line will be used primarily to fund our working capital and to enable us to issue letters of credit. The effect of issuing letters of credit under the $25.0 million Bank of America revolving credit line reduces the amount available for borrowing under the $25.0 million Bank of America revolving credit line. We may borrow, repay and reborrow under the $25.0 million Bank of America revolving credit line at either the prime rate or at a borrowing margin of 2.75% over one, three or six month LIBOR, subject to a minimum borrowing cost of 3.00%. The $25.0 million Bank of America revolving credit line contains three financial covenants, which we must comply with quarterly, consisting of a tangible net worth ratio, a debt service ratio and a senior leverage ratio and is collateralized by our domestic accounts receivable balances. As of March 31, 2010, we were in compliance with all financial covenants in connection with the $25.0 million Bank of America revolving credit line. The $25.0 million Bank of America revolving credit line is available for renewal subject to mutual agreement by both parties. As of March 31, 2010, we had issued 17 irrevocable letters of credit totaling $16.1 million under the $25.0 million Bank of America revolving credit line. As a result, the amount available to borrow was $8.9 million as of March 31, 2010.

European Financing. In April 2010, we prepaid and terminated the European financing, of which principal of $122.6 million was outstanding as of March 31, 2010 plus accrued and unpaid interest. At the same time, we paid and terminated the interest rate swaps associated with the European financing, of which a derivative liability of $4.3 million was outstanding as of March 31, 2010.

Contractual Obligations and Off-Balance Sheet Arrangements

We lease a majority of our IBX centers and certain equipment under non-cancelable lease agreements expiring through 2027. The following represents our debt maturities, financings, leases and other contractual commitments as of March 31, 2010 (in thousands):

	2010 (9 months)	2011	2012	2013	2014	2015 and thereafter	Total
Convertible debt (1)	$ —	$ —	$ 250,000	$ —	$ 395,986	$ 373,750	$ 1,019,736
Senior notes (1)	—	—	—	—	—	750,000	750,000
Asia-Pacific financing (1)	24,320	28,441	4,120	—	—	—	56,881
European financing (1)	14,908	16,565	19,875	24,019	47,188	—	122,555
Singapore financing (1)	1,233	6,167	6,167	6,167	4,934	—	24,668
Netherlands financing (1)	1,353	1,353	1,353	1,353	1,352	2,029	8,793
Interest (2)	69,640	101,788	95,750	91,985	88,631	240,191	687,985
Mortgage payable (3)	7,623	10,164	10,164	10,165	10,165	113,174	161,455
Capital lease and other financing obligations (3)	12,967	18,981	19,180	19,297	19,825	159,498	249,748
Operating leases under accrued restructuring charges (4)	1,874	2,266	2,455	2,471	2,487	1,460	13,013
Operating leases (5)	51,367	64,746	64,621	64,628	62,672	258,487	566,521
Other contractual commitments (6)	129,773	34,097	13,714	9	—	—	177,593
Asset retirement obligations (7)	—	—	—	—	—	19,707	19,707
	$ 315,058	$ 284,568	$ 487,399	$ 220,094	$ 633,240	$ 1,918,296	$ 3,858,655

(1) Represents principal only.
(2) Represents interest on convertible debt, senior notes, Asia-Pacific financing, European financing, Singapore financing and Netherlands financing based on their approximate interest rates as of March 31, 2010.
(3) Represents principal and interest.
(4) Excludes any subrental income.
(5) Represents minimum operating lease payments, excluding potential lease renewals.
(6) Represents off-balance sheet arrangements. Other contractual commitments are described below.
(7) Represents liability, net of future accretion expense.

In connection with seven of our IBX leases, we entered into 17 irrevocable letters of credit totaling $15.1 million with Bank of America. These letters of credit were provided in lieu of cash deposits under the $25.0 million Bank of America revolving credit line and automatically renew in successive one-year periods until the final lease expiration date. If the landlords for these IBX leases decide to draw down on these letters of credit triggered by an event of default under the lease, we will be required to fund these letters of credit either through cash collateral or borrowing under the $25.0 million Bank of America revolving credit line. These contingent commitments are not reflected in the table above.

Primarily as a result of our various IBX expansion projects, as of March 31, 2010, we were contractually committed for $75.8 million of unaccrued capital expenditures, primarily for IBX equipment not yet delivered and labor not yet provided in connection with the work necessary to complete construction and open these IBX data centers prior to making them available to customers for installation. This amount, which is expected to be paid during the remainder of 2010 and 2011, is reflected in the table above as "other contractual commitments."

We had other non-capital purchase commitments in place as of March 31, 2010, such as commitments to purchase power in select locations, primarily in the U.S., Australia, Germany, Netherlands, Singapore, Tokyo and the United Kingdom, during the remainder of 2010 and thereafter, and other open purchase orders, which contractually bind us for goods or services to be delivered or provided during the remainder of 2010 and beyond. Such other purchase commitments as of March 31, 2010, which total $101.8 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 of approximately $150.0 million to $200.0 million, in addition to the $75.8 million in contractual commitments discussed above as of March 31, 2010, in our various IBX expansion projects during the remainder of 2010 in order to complete the work needed to open these IBX data centers. These non-contractual capital expenditures are not reflected in the table above. If we so choose, whether due to economic factors or other considerations, we could delay these non-contractual capital expenditure commitments to preserve liquidity.

Critical Accounting 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 and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. These estimates and assumptions are affected by management's application of accounting policies. On an on-going basis, management evaluates its estimates and judgments. Critical accounting policies for Equinix that affect our more significant judgment and estimates used in the preparation of our condensed consolidated financial statements include accounting for income taxes, accounting for impairment of goodwill and accounting for property, plant and equipment, which are discussed in more detail under the caption "Critical Accounting Estimates" in Management's Discussion and Analysis of Financial Condition and Results of Operations, set forth in Part II Item 7, of our Annual Report on Form 10-K for the year ended December 31, 2009.

Recent Accounting Pronouncements

See Note 1 of Notes to Condensed Consolidated Financial Statements in Item 1 of this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

As more fully described in Cash, Cash Equivalents and Short-Term and Long-Term Investments in Note 2 of Notes to Condensed Consolidated Financial Statements in Item 1 of this Quarterly Report on Form 10-Q, during the three months ended March 31, 2010, we received an additional distribution of $3.4 million from our investment in the Reserve Primary Fund. There have been no other significant changes in our market risk, investment portfolio risk, interest rate risk, foreign currency risk and commodity price risk exposures and procedures during the three months ended March 31, 2010 as compared to the respective risk exposures and procedures disclosed in Quantitative and Qualitative Disclosures About Market Risk, set forth in Part II Item 7A, of our Annual Report on Form 10-K for the year ended December 31, 2009.

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 (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(c) ***Limitations on the Effectiveness of Controls.*** Our management, including our Chief Executive Officer and Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed and operated to be effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost effective control system, misstatements due to error or fraud may occur and not be detected.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

IPO Litigation

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. Similar lawsuits were filed against approximately 300 other issuers and related parties. These lawsuits have been coordinated before a single judge. 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.

The parties in the approximately 300 coordinated cases, including the parties in the Equinix case, reached a settlement. It provides for releases of existing claims and claims that could have been asserted relating to the conduct alleged to be wrongful from the class of investors participating in the settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Equinix. On October 6, 2009, the Court granted final approval to the settlement. Six notices of appeal and one petition seeking permission to appeal, from a group of objectors who also filed a notice of appeal, have been filed.

Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of the matter. 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. We intend to continue to defend the action vigorously if the settlement does not survive the appeal.

Pihana Litigation

On August 22, 2008, a complaint was filed against Equinix, certain former officers and directors of Pihana Pacific, Inc. ("Pihana"), certain investors in Pihana, and others. The lawsuit was filed in the First Circuit Court of the State of Hawaii, and arises out of December 2002 agreements pursuant to which Equinix merged Pihana and i-STT (a subsidiary of Singapore Technologies Telemedia Pte Ltd) into the internet exchange services business of Equinix. Plaintiffs, who were allegedly holders of Pihana common stock, allege that their rights as shareholders were violated, and the transaction was effectuated improperly, by Pihana's majority shareholders, officers and directors, with the alleged assistance of Equinix and others. Among other things, plaintiffs contend that they effectively had a right to block the transaction, that this supposed right was disregarded, and that they improperly received no consideration when the deal was completed. The complaint seeks to recover unspecified punitive damages, equitable relief, fees and costs, and compensatory damages in an amount that plaintiffs allegedly "believe may be all or a substantial portion of the approximately $725.0 million value of Equinix held by Defendants" (a group that includes more than 30 individuals and entities). An amended complaint, which adds new plaintiffs (other alleged holders of Pihana common stock) but is otherwise substantially similar to the original pleading, was filed on September 29, 2008 (the "Amended Complaint"). On October 13, 2008, a complaint was filed in a separate action by another purported holder of Pihana common stock, naming the same defendants and asserting substantially similar allegations as the August 22, 2008 and September 29, 2008 pleadings. On December 12, 2008, the court entered a stipulated order, which consolidated the two actions under one case number and set January 22, 2009 as the last day for Defendants to move to dismiss or otherwise respond to the Amended Complaint, the operative complaint in this case. On January 22, 2009, motions to dismiss the Amended Complaint were filed by Equinix and other Defendants. On April 24, 2009, plaintiffs filed a Second Amended Complaint ("SAC") to correct the naming of certain parties. The SAC is otherwise substantively identical to the Amended Complaint, and all motions to dismiss the Amended Complaint have been treated as responsive to the SAC. On September 1, 2009, the Court heard Defendants' motions to dismiss the SAC and ruled at the hearing that all claims against all Defendants are time-barred. The Court also considered whether there were further independent grounds for dismissing the claims, and supplemental briefing was submitted with respect to claims against one defendant and plaintiffs' renewed request for further leave to amend. On March 23, 2010, the Court entered final Orders granting the motions to dismiss as to all Defendants and issued a minute Order denying Plaintiffs' renewed request for further leave to amend. We believe that plaintiffs' claims and alleged damages are without merit and we intend to continue to defend the litigation vigorously.

Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of the matter. 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.

Switch and Data Litigation

In the fourth quarter of 2009, three purported stockholder class action lawsuits were filed against us in connection with our proposed merger with Switch and Data. The first, filed October 27, 2009 in the Delaware Chancery Court, names Equinix, Sundance Acquisition Corporation, Switch and Data, and the members of Switch and Data's board of directors as defendants. The lawsuit alleges that the Switch and Data directors breached their fiduciary duties to Switch and Data's stockholders in connection with the proposed merger, and that Equinix aided and abetted these alleged breaches. The second complaint, filed October 30, 2009 in Florida state court, raises similar claims against the same defendants. The third complaint, filed on December 7, 2009 in the United States District Court for the Middle District of Florida, likewise raises similar claims but did not name Sundance Acquisition Corporation as a defendant. Both the second and third complaints included claims alleging that Switch and Data had failed to disclose material information concerning the merger to stockholders.

On January 19, 2010, counsel for parties in all three lawsuits entered into a memorandum of understanding in which they agreed upon the terms of a settlement of all three lawsuits. In connection with this settlement, the three lawsuits and all claims asserted therein are expected to be dismissed with prejudice. The proposed settlement is conditional upon, among other things, consummation of the merger and final approval of the proposed settlement by the Florida state court. The proposed settlement contemplates that plaintiffs' counsel will apply to the Florida state court for an award of attorneys' fees and costs in an aggregate amount of $900,000, and that the defendants will not oppose or undermine this application. We expect that approximately 70 percent of these attorneys' fees will be paid by insurance maintained by Switch and Data, and that we will pay the remainder. Pursuant to this agreement, the parties sought and obtained stays of the Florida federal and Delaware actions pending approval of the settlement. On March 22, 2010, the parties entered into a stipulation of settlement and release, adopting the terms of the memorandum of understanding outlined above. Pursuant to this stipulation, on March 25, 2010, the parties filed a Joint Motion for Class Certification and Preliminary Approval of Settlement in Florida state court. If final approval of the settlement is granted, then the parties will seek dismissal with prejudice of the other two actions. If the settlement is not finalized, we intend to continue to defend the action vigorously.

Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of the matter. 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.

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:

Our substantial debt could adversely affect our cash flows and limit our flexibility to raise additional capital.

We have a significant amount of debt and expect to incur additional debt to support our growth. As of March 31, 2010, our total indebtedness was approximately $2.1 billion, our stockholders' equity was $1.2 billion and our cash and investments totaled $1.2 billion.

Our substantial amount of debt could have important consequences. For example, it could:

- require us to dedicate a substantial portion of our cash flow from operations to make interest and principal payments on our debt, reducing the availability of our cash flow to fund future capital expenditures, working capital, execution of our expansion strategy and other general corporate requirements;
- make it more difficult for us to satisfy our obligations under our various debt instruments;
- increase our vulnerability to general adverse economic and industry conditions and adverse changes in governmental regulations;
- limit our flexibility in planning for, or reacting to, changes in our business and industry, which may place us at a competitive disadvantage compared with our competitors;
- limit our ability to borrow additional funds, even when necessary to maintain adequate liquidity, which would also limit our ability to further expand our business; and
- make us more vulnerable to increases in interest rates because of the variable interest rates on some of our borrowings to the extent we have not entirely hedged such variable rate debt.

The occurrence of any of the foregoing factors could have a material adverse effect on our business, results of operations and financial condition. In addition, the performance of our stock price may trigger events that would require the write-off of a significant portion of our debt issuance costs related to our convertible debt, which may have a material adverse effect on our results of operations.

In addition, of our total indebtedness as of March 31, 2010, $1.2 billion was non-convertible senior debt. These are committed facilities, virtually all of which are fully drawn or advanced, for which we are amortizing debt repayments of either principal and/or interest only, and we were in compliance with the covenants related to this debt effective March 31, 2010. However, deteriorating market and liquidity conditions may give rise to issues which may impact the lenders' ability to hold these debt commitments to maturity. Accordingly, these lenders of committed and drawn facilities may refuse to fund advances under the undrawn facilities or attempt to call outstanding amounts, even though no call provisions exist absent a default. Loss of these facilities would have an adverse effect on our liquidity.

We may also need to refinance a portion of our outstanding debt as it matures, such as our $250.0 million 2.50% convertible subordinated notes due 2012. There is a risk that we may not be able to refinance existing debt or that the terms of any refinancing may not be as favorable as the terms of our existing debt. Furthermore, if prevailing interest rates or other factors at the time of refinancing result in higher interest rates upon refinancing, then the interest expense relating to that refinanced indebtedness would increase. These risks could materially adversely affect our financial condition, cash flows and results of operations.

Acquisitions present many risks, and we may not realize the financial or strategic goals that were contemplated at the time of any transaction.

In October 2009, we announced that we had entered into an agreement to acquire Switch and Data in a transaction valued at approximately $649.0 million based on the closing price of Equinix common stock as of April 23, 2010. Over the last several years, we have completed several other acquisitions (including our acquisitions of IXEurope plc in 2007, Virtu Secure Webservices B.V. in 2008 and Upminster GmbH in 2009). We may make additional acquisitions in the future, which may include acquisitions of businesses, products, services or technologies that we believe to be complementary, as well as acquisitions of new IBX data centers or real estate for development of new IBX data centers. We may pay for future acquisitions by using our existing cash resources (which may limit other potential uses of our cash), incurring additional debt (which may increase our interest expense, leverage and debt service requirements) and/or issuing shares (which may dilute our existing stockholders and have a negative effect on our earnings per share). Acquisitions expose us to several potential risks, including:

- the possible disruption of our ongoing business and diversion of management's attention by acquisition, transition and integration activities;
- our potential inability to successfully pursue or realize some or all of the anticipated revenue opportunities associated with an acquisition;
- the possibility that we may not be able to successfully integrate acquired businesses or achieve anticipated operating efficiencies or cost savings;
- the possibility that announced acquisitions may not be completed, due to failure to satisfy the conditions to closing or for other reasons;
- the dilution of our existing stockholders as a result of our issuing stock in transactions such as our acquisition of Switch and Data, where 80% of the consideration payable to Switch and Data's stockholders will consist of shares of our common stock;
- the possibility of customer dissatisfaction if we are unable to achieve levels of quality and stability on par with past practices;
- the possibility that our customers may not accept either the existing equipment infrastructure or the "look-and-feel" of a new or different IBX data center;
- the possibility that additional capital expenditures may be required or that transaction expenses associated with acquisitions may be higher than anticipated;
- the possibility that required financing to fund the requirements of an acquisition may not be available on acceptable terms or at all;
- the possibility that we may be unable to obtain required approvals from governmental authorities under antitrust and competition laws on a timely basis or at all, which could, among other things, delay or prevent us from completing an acquisition, limit our ability to realize the expected financial or strategic benefits of an acquisition or have other adverse effects on our current business and operations;

- the possible loss or reduction in value of acquired businesses;
- the possibility that carriers may find it cost-prohibitive or impractical to bring fiber and networks into a new IBX data center;
- the possibility of litigation or other claims in connection with or as a result of an acquisition, including claims from terminated employees, customers, former stockholders or other third parties; and
- the possibility of pre-existing undisclosed liabilities, including but not limited to environmental or asbestos liability, for which insurance coverage may be insufficient or unavailable.

The occurrence of any of these risks could have a material adverse effect on our business, results of operations, financial condition or cash flows.

We cannot assure you that the price for any future acquisitions of IBX data centers will be similar to prior IBX data center acquisitions. In fact, we expect acquisition costs, including capital expenditures required to build or render new IBX data 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.

The uncertain economic environment may continue to have an impact on our business and financial condition.

The uncertain economic environment could have an adverse effect on our liquidity. Customer collections are our primary source of cash. While we believe we have a strong customer base and have continued to experience strong collections, if the current market conditions were to worsen, some of our customers may have difficulty paying us and we may experience increased churn in our customer base, including reductions in their commitments to us. We may also be required to further increase our allowance for doubtful accounts and our results would be negatively impacted. Our sales cycle could also continue to be lengthened if customers slow spending, or delay decision-making, on our products and services, which could adversely affect our revenue growth. Finally, we could also experience pricing pressure as a result of economic conditions if our competitors lower prices and attempt to lure away our customers with lower cost solutions.

The uncertain economic environment could also have an impact on our foreign exchange forward contract and interest rate swap hedging contracts if our counterparties' credit deteriorates further or they are otherwise unable to perform their obligations.

Finally, our ability to access the capital markets may be severely restricted at a time when we would like, or need, to do so which could have an impact on our flexibility to pursue additional expansion opportunities and maintain our desired level of revenue growth in the future.

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

Our capital expenditures, together with ongoing operating expenses and obligations to service our debt, will be a substantial drain on our cash flow and may decrease our cash balances. 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 additional debt and/or equity financing or to generate sufficient cash from operations may require us to prioritize projects or curtail capital expenditures which could adversely affect our results of operations.

Fluctuations in foreign currency exchange rates in the markets in which we operate internationally could harm our results of operations.

We may experience gains and losses resulting from fluctuations in foreign currency exchange rates. To date, the majority of our revenues and costs are denominated in U.S. dollars; however, the majority of revenues and costs in our international operations are denominated in foreign currencies. 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 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 as a result of declines in the U.S dollar relative to foreign currencies. In addition, fluctuating foreign currency exchange rates have a direct impact on how our international results of operations translate into U.S. dollars.

Although we have in the past, and may decide in the future, to undertake foreign exchange hedging transactions to reduce foreign currency transaction exposure, we do not currently intend to eliminate all foreign currency transaction exposure. For example, while we hedge certain of our foreign currency assets and liabilities on our consolidated balance sheet, we do not hedge revenue. During the first half of 2008, the U.S. dollar had been generally weaker relative to certain of the currencies of the foreign countries in which we operate. This overall weakness of the U.S. dollar had a positive impact on our consolidated results of operations because the foreign denominations translated into more U.S. dollars. However, during the second half of 2008 and through the first quarter of 2009, the U.S. dollar strengthened relative to certain of the currencies of the foreign countries in which we operate. This significantly impacted our consolidated financial position and results of operations as amounts in foreign currencies are generally translating into less U.S. dollars. During the last three quarters of 2009, the U.S. dollar weakened again relative to certain of the currencies of the foreign countries in which we operate, which had a positive impact to our results of operations. However, during the three months ended March 31, 2010, the U.S. dollar strengthened relative to certain of the currencies of the foreign countries in which we operate, which had a negative impact to our results of operations. In future periods, additional strengthening of the U.S. dollar could continue to have a negative impact on our consolidated financial position and results of operations including the amount of revenue that we report in future periods. For additional information on foreign currency risk, refer to our discussion of foreign currency risk in “Quantitative and Qualitative Disclosures About Market Risk” included in Part 1, Item 3 of this Quarterly Report.”

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 and the construction of new IBX data centers beyond those expansion projects already announced. We will be required to commit substantial operational and financial resources to these IBX data centers, generally 12 to 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 data centers. Either of these contingencies, if they were to occur, could make it difficult for us to realize expected or reasonable returns on these investments.

Our products and services have a long sales cycle that may harm our revenues and operating results.

A customer’s decision to license cabinet space in one of our IBX data 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 data centers until they are confident that the IBX data 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.

The current economic downturn may further impact this long sales cycle by making it extremely difficult for customers to accurately forecast and plan future business activities. This could cause customers to slow spending, or delay decision-making, on our products and services, which would delay and lengthen our sales cycle.

Delays due to the length of our sales cycle may materially and adversely affect our revenues and operating results, which could harm our ability to meet our forecasts for a given quarter and cause volatility in our stock price.

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

As of March 31, 2010, our accumulated deficit was $371.8 million. Although we have generated net income since 2008, our first full year of net income since our inception, we are also currently investing heavily in our future growth through the build-out of multiple additional IBX data centers and IBX data center expansions as well as acquisitions. As a result, we will incur higher depreciation and other operating expenses, as well as acquisition costs and interest expense, that may negatively impact our ability to sustain profitability in future periods unless and until these new IBX data centers generate enough revenue to exceed their operating costs and cover our additional overhead needed to scale our business for this anticipated growth. The current global financial crisis may also impact our ability to sustain profitability if we cannot generate sufficient revenue to offset the increased costs of our recently-opened IBX data centers or IBX data centers currently under construction. In addition, costs associated with the acquisition and integration of any acquired companies, as well as the additional interest expense associated with debt financing we have undertaken to fund our growth initiatives, may also negatively impact our ability to sustain profitability. Finally, 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.

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 data centers. Furthermore, we continue to acquire IBX data centers not built by us. If we discover that these IBX data centers and their infrastructure assets are not in the condition we expected when they were acquired, we may be required to incur substantial additional costs to repair or upgrade the centers. The services we provide in each of our IBX data centers are subject to failure resulting from numerous factors, including:

- human error;
- equipment failure;
- physical, electronic and cybersecurity 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 data centers, whether or not within our control, could result in service interruptions or significant equipment damage. 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 data centers could result in difficulty maintaining service level commitments to these customers and potential claims related to such failures. Because our IBX data centers are critical to many of our customers' businesses, service interruptions or significant equipment damage in our IBX data centers could also result in lost profits or other indirect or consequential damages to our customers. We cannot guarantee that a court would enforce any contractual limitations on our liability in the event that one of our customers brings a lawsuit against us as the result of a problem at one of our IBX data centers.

We may incur significant liability to our customers in connection with a loss of power or our failure to meet other service level commitment obligations, or if we are held liable for a substantial damage award. In addition, any loss of service, 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-Pacific region, Europe 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 and adversely impacted.

Our construction of additional new IBX data centers could involve significant risks to our business.

In order to sustain our growth in certain of our existing and new markets, we must acquire suitable land with or without structures to build new IBX data centers from the ground up. We call these "greenfield builds." Greenfield builds are currently underway, or being contemplated, in several key markets. A greenfield build involves substantial planning and lead-time, much longer time to completion than an IBX retrofit of an existing data center, 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 more 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 data centers adjacent to our existing locations, we may be limited by the inventory and location of suitable properties, as well as by the need for adequate power and fiber to the site. In the event we decide to build new IBX data centers separate from our existing IBX data 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 and lower margins and could have a negative impact on customer retention over time.

Environmental regulations may impose upon us new or unexpected costs.

We are subject to various federal, state, local and foreign 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 some of our locations, there are land use restrictions in place relating to earlier environmental cleanups that do not materially limit our use of the sites. 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, we are subject to environmental, health and safety laws regulating air emissions, storm water management and other issues arising in our business. While these obligations do not normally impose material costs upon our operations, unexpected events, equipment malfunctions and human error, among other factors, can lead to violations of environmental laws, regulations or permits. Furthermore, environmental laws and regulations change frequently and may require additional investment to maintain compliance. 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.

Fossil fuel combustion creates greenhouse gas emissions that are linked to global climate change. Regulations to limit greenhouse gas emissions are in force in the European Union in an effort to prevent or reduce climate change. In the United States, federal legislative proposals are being actively considered that would, if adopted, implement some form of regulation or taxation to reduce or mitigate greenhouse gas ("GHG") emissions. In addition, the U.S. Environmental Protection Agency ("EPA") is taking steps towards using its existing authority under the Clean Air Act to regulate greenhouse gas emissions. Among other steps, EPA published the final rule for the "endangerment finding" on December 15, 2009, which declares that GHG emissions cause global warming and that global warming endangers the public health and welfare. This finding will lead to regulation of GHG emissions from various sources, potentially affecting facilities like the data centers we operate.

Several states within the United States have adopted laws intended to limit fossil fuel consumption and/or encourage renewable energy development for the same purpose. For example, California enacted AB-32, the Global Warming Solutions Act of 2006, prescribing a statewide cap on global warming pollution with a goal of reaching 1990 greenhouse gas emission levels by 2020 and 80% below 1990 levels by 2050 and establishing a mandatory emissions reporting program.

Federal, regional, state and international regulatory programs are still developing. In their final form, they may include a tax on carbon, a carbon "cap-and-trade" market, and/or other restrictions on carbon and greenhouse gas emissions. The area of greenhouse gas limitations and regulation is rapidly changing and will continue to change as additional legislation is considered and adopted, and regulations are finalized that implement existing law.

We do not anticipate that climate change-related laws and regulations would directly limit the emissions of greenhouse gases by our operations. We could, however, be directly subject to taxes, fees or costs, or could indirectly be required to reimburse electricity providers for such costs that would represent the amount of greenhouse gases we emit. The expected controls on greenhouse gas emissions are likely to increase the costs of electricity or fossil fuels, and these cost increases could materially increase our costs of operation or limit the availability of electricity or emergency generator fuels. The physical impacts of climate change, including extreme weather conditions such as heat waves, could materially increase our costs of operation due to, for example, an increase in our energy use in order to maintain the temperature and internal environment of our data centers necessary for our operations. To the extent any environmental laws enacted or regulations passed by the United States, or any domestic or foreign jurisdiction we perform business in, impose new or unexpected costs, our business, results of operations or financial condition may be adversely affected.

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

Our IBX data 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 telecom companies, carriers, 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 data 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 data centers. If these competitors were able to adopt aggressive pricing policies together with offering colocation space, our ability to generate revenues may be materially and adversely affected.

We may also face competition from persons seeking to replicate our IBX data center concept by building new IBX data centers or converting existing IBX data 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 IBX data centers, 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 data centers.

The market price of our stock may continue to be highly volatile, and the value of an investment in our common stock may decline.

Since January 1, 2009, the closing sale price of our common stock on the NASDAQ Global Select Market has ranged from $42.26 to $109.56 per share. The market price of the shares of our common stock has been and may continue to be highly volatile. General economic and market conditions, and market conditions for telecommunications stocks in general, may affect the market price of our common stock.

Announcements by others or us may also have a significant impact on the market price of our common stock. These announcements may relate to:

- our operating results or forecasts;
- new issuances of equity, debt or convertible debt by us;
- 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;
- our purchase or development of real estate and/or additional IBX data centers;
- acquisitions by us of complementary businesses, including developments with respect to our pending acquisition of Switch and Data; or
- the operational performance of our IBX data centers.

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.

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 data 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 data centers in 2005, London metro area IBX data centers in 2007 and Paris metro area IBX data centers in 2009.

In addition, global fluctuations in the price of power can increase the cost of energy, and although contractual price increase clauses exist in the majority of our customer agreements, we may not always choose 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 data center designs.

We are exposed to potential risks from errors in our financial reporting systems and controls, including the potential for material misstatements in our consolidated financial statements.

Section 404 of the Sarbanes-Oxley Act of 2002 requires companies to evaluate their internal controls over financial reporting. Although we received an unqualified opinion regarding the effectiveness of our internal controls over financial reporting as of December 31, 2009, in the course of our ongoing evaluation we have identified certain areas where we would like to improve and we are in the process of evaluating and designing enhanced processes and controls to address such areas, none of which we believe constitutes 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 and as we acquire other businesses.

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 have in the past, and may in the future, discover deficiencies in existing systems and controls. In addition, internal reporting systems and controls are subject to human error. Any such deficiencies could result in material misstatements in our consolidated financial statements, which might involve restating previously issued financial statements. Additionally, as we expand, we will need to implement new systems to support our financial reporting systems and controls. We may not be able to implement these systems such that errors would not be identified in a timely manner, which could result in material misstatements in our consolidated financial statements.

If we cannot effectively manage our international operations, and successfully implement 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, 2009, 2008 and 2007, we recognized 39%, 37% and 23%, respectively, of our revenues outside the United States. For the three months ended March 31, 2010, we recognized 40% of our revenues outside the United States.

To date, the network neutrality of our IBX data centers and the variety of networks available to our customers has often been a competitive advantage for us. In certain of our acquired IBX data centers in the Asia-Pacific region 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 those markets. In addition, we are currently undergoing expansions or evaluating expansion opportunities in Europe and in the Asia-Pacific region. Undertaking and managing expansions in foreign jurisdictions may present unanticipated challenges to us.

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

- the costs of customizing IBX data 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, including negotiating with foreign labor unions or workers' councils;
- political and economic instability;
- fluctuations in currency exchange rates;
- difficulties in repatriating funds from certain countries;
- our ability to obtain, transfer, or maintain licenses required by governmental entities with respect to our business;
- unexpected changes in regulatory, tax and political environments;
- our ability to secure and maintain the necessary physical and telecommunications infrastructure;

- compliance with the Foreign Corrupt Practices Act; and
- compliance with evolving governmental regulation with which we have little experience.

In addition, compliance with international and U.S. laws and regulations that apply to our international operations increases our cost of doing business in foreign jurisdictions. These laws and regulations include data privacy requirements, labor relations laws, tax laws, anti-competition regulations, import and trade restrictions, export requirements, U.S. laws such as the Foreign Corrupt Practices Act, and local laws which also prohibit corrupt payments to governmental officials. Violations of these laws and regulations could result in fines, criminal sanctions against us, our officers or our employees, and prohibitions on the conduct of our business. Any such violations could include prohibitions on our ability to offer our services in one or more countries, could delay or prevent potential acquisitions, and could also materially damage our reputation, our brand, our international expansion efforts, our ability to attract and retain employees, our business and our operating results. Our success depends, in part, on our ability to anticipate and address these risks and manage these difficulties.

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

Customers are increasing their use of high-density electrical power equipment, such as blade servers, in our IBX data centers which has significantly increased the demand for power on a per cabinet basis. Because many of our IBX data centers were built a number of 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 data centers may be limited. The availability of sufficient power may also pose a risk to the successful operation of our new IBX data centers. The ability to increase the power capacity of an IBX data center, 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 data center 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 data centers could become obsolete sooner than expected.

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 be volatile. We expect to experience significant fluctuations in our operating results in the foreseeable future due to a variety of factors, including, but not limited to:

- fluctuations of foreign currencies in the markets in which we operate;
- the timing and magnitude of capital expenditures, financing or other expenses related to the acquisition, purchase or construction of additional IBX data centers or the upgrade of existing IBX data centers;
- demand for space, power and services at our IBX data centers;
- changes in general economic conditions, such as the current economic downturn, and specific market conditions in the telecommunications and Internet industries, both of which may have an impact on our customer base;
- charges to earnings resulting from past acquisitions due to, among other things, impairment of goodwill or intangible assets, reduction in the useful lives of intangible assets acquired, identification of additional assumed contingent liabilities or revised estimates to restructure an acquired company's operations;

- the duration of the sales cycle for our services;
- restructuring charges or reversals of existing restructuring charges, which may be necessary due to revised sublease assumptions, changes in strategy or otherwise;
- acquisitions or dispositions we may make, including developments with respect to our pending acquisition of Switch and Data;
- the financial condition and credit risk of our customers;
- 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 data centers;
- lack of available capacity in our existing IBX data centers to generate new revenue or delays in opening up new or acquired IBX data centers that delay our ability to generate new revenue in markets which have otherwise reached capacity;
- changes in rent expense as we amend our IBX data center leases in connection with extending their lease terms when their initial lease term expiration dates approach;
- the timing and magnitude of other operating expenses, including taxes, expenses related to the expansion of sales, marketing, operations and acquisitions, if any, of complementary businesses and assets;
- the cost and availability of adequate public utilities, including power;
- changes in employee stock-based compensation;
- overall inflation;
- increasing interest expense due to any increases in interest rates and/or potential additional debt financings;
- changes in income tax benefit or expense; and
- changes in or new generally accepted accounting principles (GAAP) in the U.S. as periodically released by the Financial Accounting Standards Board (FASB).

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. Prior to 2008, we had generated net losses every fiscal year since inception. It is possible that we may not be able to 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.

The failure to obtain favorable terms when we renew our IBX data center leases could harm our business and results of operations.

While we own certain of our IBX data centers, others are leased under long-term arrangements with lease terms expiring at various dates ranging from 2010 to 2027. These leased centers have all been subject to significant development by us in order to convert them from, in most cases, vacant buildings or warehouses into IBX data centers. All of our IBX data center leases have renewal options available to us. However, many of these renewal options provide for rent set at then-prevailing market rates. To the extent that then-prevailing market rates are higher than present rates, these higher costs may adversely impact our business and results of operations.

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

The presence of diverse telecommunications carriers' fiber networks in our IBX data 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 data centers. Carriers will likely evaluate the revenue opportunity of an IBX data center based on the assumption that the environment will be highly competitive. We cannot provide assurance that each and every carrier will elect to offer its services within our IBX data centers or that once a carrier has decided to provide Internet connectivity to our IBX data 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 data centers, which could have an adverse effect on our operating results.

Our new IBX data centers require construction and operation of a sophisticated redundant fiber network. The construction required to connect multiple carrier facilities to our IBX data 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 data 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 data center expansions. This could affect our ability to attract new customers to these IBX data centers or retain existing customers.

We may be vulnerable to security breaches which could disrupt our operations and have a material adverse effect on our financial performance and operating results.

A party who is able to compromise the security measures on our networks or the security of our infrastructure 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. As techniques used to breach security change frequently, and are generally not recognized until launched against a target, we may not be able to implement security measures in a timely manner or, if and when implemented, we may not be certain whether these measures could be circumvented. Any breaches that may occur could expose us to increased risk of lawsuits, regulatory penalties, loss of existing or potential customers, harm to our reputation and increases in our security costs, which could have a material adverse effect on our financial performance and operating results.

We have government customers, which subjects us to risks including early termination, audits, investigations, sanctions and penalties.

We derive some revenues from contracts with the U.S. government, state and local governments and their respective agencies. Some of these customers may terminate all or part of their contracts at any time, without cause.

There is increased pressure for governments and their agencies, both domestically and internationally, to reduce spending. Some of our federal government contracts are subject to the approval of appropriations being made by the U.S. Congress to fund the expenditures under these contracts. Similarly, some of our contracts at the state and local levels are subject to government funding authorizations.

Additionally, government contracts are generally subject to audits and investigations which could result in various civil and criminal penalties and administrative sanctions, including termination of contracts, refund of a portion of fees received, forfeiture of profits, suspension of payments, fines and suspensions or debarment from future government business.

Because we depend on the development and growth of a balanced customer base, including key magnet customers, 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 global enterprises, content providers, financial companies, and network service providers. We consider certain of these customers to be key magnets in that they draw in other customers. The more balanced the customer base within each IBX data 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 data 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 presence of key customers attracting business through vertical market ecosystems, the IBX data center's operating reliability and security and our ability to effectively market our services. However, some of our customers may face competitive pressures and may ultimately not be successful or may be consolidated through merger or acquisition. If these customers do not continue to use our IBX data centers it may be disruptive to our business. Finally, the uncertain economic climate may harm our ability to attract and retain customers if customers slow spending, or delay decision-making, on our products and services, or if customers begin to have difficulty paying us and we experience increased churn in our customer base. Any of these factors may hinder the development, growth and retention of a balanced customer base and adversely affect our business, financial condition and results of operations.

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

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. Similar complaints were filed against more than 300 other issuers, their officers and directors, and investment banks. 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. The parties in the approximately 300 coordinated cases, including the parties in the Equinix case, reached a settlement. It provides for releases of existing claims and claims that could have been asserted relating to the conduct alleged to be wrongful from the class of investors participating in the settlement. The insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Equinix. On October 6, 2009, the Court granted final approval to the settlement. Six notices of appeal and one petition seeking permission to appeal, from a group of objectors who also filed a notice of appeal, have been filed.

On August 22, 2008, a complaint was filed against Equinix, certain former officers and directors of Pihana Pacific, Inc. ("Pihana"), certain investors in Pihana, and others. The lawsuit was filed in the First Circuit Court of the State of Hawaii, and arises out of December 2002 agreements pursuant to which Equinix merged Pihana and i-STT (a subsidiary of Singapore Technologies Telemedia Pte Ltd) into the internet exchange services business of Equinix. Plaintiffs, who were allegedly holders of Pihana common stock, allege that their rights as shareholders were violated, and the transaction was effectuated improperly, by Pihana's majority shareholders, officers and directors, with the alleged assistance of Equinix and others. Among other things, plaintiffs contend that they effectively had a right to block the transaction, that this supposed right was disregarded, and that they improperly received no consideration when the deal was completed. The complaint seeks to recover unspecified punitive damages, equitable relief, fees and costs, and compensatory damages in an amount that plaintiffs allegedly "believe may be all or a substantial portion of the approximately $725 million value of Equinix held by Defendants" (a group that includes more than 30 individuals and entities). An amended complaint, which adds new plaintiffs (other alleged holders of Pihana common stock), but is otherwise substantially similar to the original pleading, was filed on September 29, 2008 (the "Amended Complaint"). On October 13, 2008, a complaint was filed by another purported holder of Pihana common stock, naming the same defendants and asserting substantially similar allegations as the August 22, 2008 and September 29, 2008 pleadings. On December 12, 2008, the court entered a stipulated order, which consolidated the two actions under one case number and set January 22, 2009 as the last day for Defendants to move to dismiss or otherwise respond to the Amended Complaint, the operative complaint in this case. On January 22, 2009, motions to dismiss the Amended Complaint were filed by Equinix and other Defendants. On April 24, 2009, plaintiffs filed a Second Amended Complaint ("SAC") to correct the naming of certain parties. The SAC is otherwise substantively identical to the Amended Complaint, and all motions to dismiss the Amended Complaint have been treated as responsive to the SAC. On September 1, 2009, the Court heard Defendants' motions to dismiss the SAC and ruled at the hearing that all claims against all Defendants are time-barred. The Court also considered whether there were further independent grounds for dismissing the claims, and supplemental briefing was submitted with respect to claims against one defendant and plaintiffs' renewed request for further leave to amend. On March 23, 2010, the Court entered final Orders granting the motions to dismiss as to all Defendants and issued a minute Order denying Plaintiffs' renewed request for further leave to amend. We believe that plaintiffs' claims and alleged damages are without merit and we intend to continue to defend the litigation vigorously.

In the fourth quarter of 2009, three purported stockholder class action lawsuits were filed against us in connection with our proposed merger with Switch and Data. The first, filed October 27, 2009 in the Delaware Chancery Court, names Equinix, Sundance Acquisition Corporation, Switch and Data, and the members of Switch and Data's board of directors as defendants. The lawsuit alleges that the Switch and Data directors breached their fiduciary duties to Switch and Data's stockholders in connection with the proposed merger, and that Equinix aided and abetted these alleged breaches. The second complaint, filed October 30, 2009 in Florida state court, raises similar claims against the same defendants. The third complaint, filed on December 7, 2009 in the United States District Court for the Middle District of Florida, likewise raises similar claims but did not name Sundance Acquisition Corporation as a defendant. Both the second and third complaints included claims alleging that Switch and Data had failed to disclose material information concerning the merger to stockholders. On January 19, 2010, counsel for parties in all three lawsuits entered into a memorandum of understanding in which they agreed upon the terms of a settlement of all three lawsuits. In connection with this settlement, the three lawsuits and all claims asserted therein are expected to be dismissed with prejudice. The proposed settlement is conditional upon, among other things, consummation of the merger and final approval of the proposed settlement by the Florida state court. The proposed settlement contemplates that plaintiffs' counsel will apply to the Florida state court for an award of attorneys' fees and costs in an aggregate amount of $900,000, and that the defendants will not oppose or undermine this application. We expect that approximately 70 percent of these attorneys' fees will be paid by insurance maintained by Switch and Data, and that we will pay the remainder. Pursuant to this agreement, the parties sought and obtained stays of the Florida federal and Delaware actions pending approval of the settlement. On March 22, 2010, the parties entered into a stipulation of settlement and release, adopting the terms of the memorandum of understanding outlined above. Pursuant to this stipulation, on March 25, 2010, the parties filed a Joint Motion for Class Certification and Preliminary Approval of Settlement in Florida state court. If final approval of the settlement is granted, then the parties will seek dismissal with prejudice of the other two actions.

Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcomes of the above matters or whether such outcomes would have a material impact on our business, results of operations, financial condition or cash flows.

We continue to participate in the defense of the above matters, which may increase our expenses and divert management's attention and resources. In addition, we may, in the future, be subject to other litigation. For example, securities class action litigation has often been brought against a company following periods of volatility in the market price of its securities. Any adverse outcome in litigation could seriously harm our business, results of operations, financial condition or cash flows.

We may not be able to protect our intellectual property rights.

We cannot assure that the steps taken by us to protect our intellectual property rights will be adequate to deter misappropriation of proprietary information or that we will be able to detect unauthorized use and take appropriate steps to enforce our intellectual property rights. We also are subject to the risk of litigation alleging infringement of third-party intellectual property rights. Any such claims could require us to spend significant sums in litigation, pay damages, develop non-infringing intellectual property, or acquire licenses to the intellectual property that is the subject of the alleged infringement.

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 operations.

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 contribute to a climate of political and economic uncertainty. Due to existing or developing circumstances, we may need to incur additional costs in the future to provide enhanced security, including cybersecurity, 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 data centers. We may not have adequate property and liability insurance to cover catastrophic events or attacks.

We have various mechanisms in place that may discourage takeover attempts.

Certain provisions of our certificate of incorporation and bylaws may discourage, delay or prevent a third party from acquiring control of us in a merger, acquisition or similar transaction that a stockholder may consider favorable. Such provisions include:

- authorization for the issuance of "blank check" preferred stock;
- the prohibition of cumulative voting in the election of directors;
- a super-majority voting requirement to effect business combinations or certain amendments to our certificate of incorporation and bylaws;
- limits on the persons who may call special meetings of stockholders;
- the prohibition of stockholder action by written consent; and
- advance notice requirements for nominations to the Board or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law, which restricts certain business combinations with interested stockholders in certain situations, may also discourage, delay or prevent someone from acquiring or merging with us.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. (Removed and reserved)

Item 5. Other Information

On April 28, 2010, we prepaid and terminated the £82.0 million Senior Facilities Agreement dated June 28, 2007, by and among Equinix Group Limited, as administrative agent and security trustee and the Lenders (as defined therein), as amended, of which principal of $122.6 million was outstanding as of March 31, 2010 plus accrued and unpaid interest. On the same date, we paid and terminated the interest rate swaps associated with the European financing, of which a derivative liability of $4.3 million was outstanding as of March 31, 2010.

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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		
2.2	Agreement and Plan of Merger dated October 21, 2009, by and among Equinix, Inc., Switch & Data Facilities Company, Inc. and Sundance Acquisition Corporation.	8-K	10/22/09	2.1	
2.3	Voting Agreement dated October 21, 2009, by and among Equinix, Inc. and certain directors, executive officers and significant stockholders of Switch & Data Facilities Company, Inc.	8-K	10/22/09	2.2	
2.4	First Amendment to the Agreement and Plan of Merger dated March 20, 2010, by and among Equinix, Inc., Switch & Data Facilities Company, Inc. and Sundance Acquisition Corporation.	8-K	3/22/10	2.1	
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	Amended and Restated Bylaws of the Registrant.	8-K	12/22/08	3.2	
4.1	Reference is made to Exhibits 3.1, 3.2 and 3.3.				
4.2	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	
4.3	Form of 2.50% Convertible Subordinated Note Due 2012 (see Exhibit 4.2).				

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
4.4	Indenture dated September 26, 2007 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	8-K	9/26/07	4.4	
4.5	Form of 3.00% Convertible Subordinated Note Due 2014 (see Exhibit 4.4).				
4.6	Indenture dated June 12, 2009 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	8-K	6/12/09	4.1	
4.7	Form of 4.75% Convertible Subordinated Note Due 2016 (see Exhibit 4.6).				
4.8	Indenture dated March 3, 2010 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.				X
4.9	Form of 8.125% Senior Note Due 2018 (see Exhibit 4.8).				X
10.1	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	
10.2	2000 Equity Incentive Plan, as amended.	10-K	12/31/07	10.3	
10.3	2000 Director Option Plan, as amended.	10-K	12/31/07	10.4	
10.4	2001 Supplemental Stock Plan, as amended.	10-K	12/31/07	10.5	
10.5	Equinix, Inc. 2004 Employee Stock Purchase Plan, as amended.	S-8 (File No. 333-165033)	12/31/05	10.115	
10.6	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	
10.7	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	
10.8+	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	
10.9	Lease Agreement dated as of December 21, 2005 between Equinix RP II, LLC and Equinix, Inc.	10-K	12/31/05	10.128	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.10	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	
10.11	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	
10.12	Form of Restricted Stock Agreements for Stephen M. Smith under the Equinix, Inc. 2000 Equity Incentive Plan.	10-Q	3/31/07	10.45	
10.13	Facility Agreement dated August 31, 2007 by and among Equinix Singapore Pte. Ltd., Equinix Japan K.K., the Additional Borrowers (as defined therein), the Lenders (as defined therein), and ABN AMRO BANK N.V., and related Guarantee dated August 31, 2007 by Equinix, Inc.	10-Q	9/30/07	10.47	
10.14	£82,000,000 Senior Facilities Agreement dated June 29, 2007 by and among IXEurope plc, CIT Bank Limited, as arranger, CIT Capital Finance (UK) Limited, as administrative agent and security trustee and the Lenders (as defined therein).	10-Q	9/30/07	10.49	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.15	Amendment and Accession Agreement, dated as of January 31, 2008, by and among Equinix Singapore Pte. Ltd., Equinix Japan K.K. and Equinix Australia Pty. Limited, as Borrowers, ABN AMRO Bank N.V., Singapore Branch, ABN AMRO Bank N.V., Japan Branch and ABN AMRO Australia Pty Limited, as Lenders and ABN AMRO Bank N.V., as Facility Agent, Arranger and Collateral Agent and related Amendment No. 1 to Guarantee by Equinix, Inc.	10-K	12/31/07	10.32	
10.16	Letter Agreement, dated April 22, 2008, by and between Eric Schwartz and Equinix Operating Co,, Inc.	10-Q	6/30/08	10.34	
10.17	Letter Amendment, dated May 6, 2008, to £82,000,000 Senior Facilities Agreement dated June 29, 2007, by and among Equinix Group Limited, CIT Bank Limited, as arranger, CIT Capital Finance (UK) Limited, as administrative agent and security trustee and the Lenders (as defined therein).	10-Q	6/30/08	10.37	
10.18	Second Amendment and Accession Agreement, dated as of June 6, 2008, by and among Equinix Singapore Pte. Ltd., Equinix Japan K.K., Equinix Australia Pty. Limited and Equinix Hong Kong Limited, as Borrowers, ABN AMRO Bank N.V. and Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., Hong Kong Branch, as Lenders and ABN AMRO Bank N.V., as Facility Agent, Arranger and Collateral Agent and related Amendment No. 2 to Guarantee by Equinix, Inc.	10-Q	6/30/08	10.38	
10.19	Lease Agreement, dated September 30, 2008, by and between Equinix Paris SAS and Digital Realty (Paris 2) SCI, and related guarantee by Equinix, Inc.	10-Q	9/30/08	10.40	
10.20	Letter of Approval & Consent, dated January 15, 2009, to £82,000,000 Senior Facilities Agreement dated June 29, 2007, by and among Equinix Group Limited, CIT Bank Limited, as arranger, CIT Capital Finance (UK) Limited, as administrative agent and security trustee and the Lenders (as defined therein).	10-K	12/31/08	10.30	
10.21	Severance Agreement by and between Stephen Smith and Equinix, Inc. dated December 18, 2008.	10-K	12/31/08	10.31	
10.22	Severance Agreement by and between Peter Van Camp and Equinix, Inc. dated December 10, 2008.	10-K	12/31/08	10.32	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.23	Severance Agreement by and between Keith Taylor and Equinix, Inc. dated December 19, 2008.	10-K	12/31/08	10.33	
10.24	Severance Agreement by and between Peter Ferris and Equinix, Inc. dated December 17, 2008.	10-K	12/31/08	10.34	
10.25	Change in Control Severance Agreement by and between Eric Schwartz and Equinix, Inc. dated December 19, 2008.	10-K	12/31/08	10.35	
10.26	Change in Control Severance Agreement by and between Jarrett Appleby and Equinix, Inc. dated December 11, 2008.	10-K	12/31/08	10.36	
10.27	Offer Letter from Equinix, Inc. to Jarrett Appleby dated November 6, 2008.	10-K	12/31/08	10.37	
10.28	Restricted Stock Unit Agreement for Jarrett Appleby under the Equinix, Inc. 2000 Equity Incentive Plan.	10-K	12/31/08	10.38	
10.29	Form of Restricted Stock Unit Agreement for CEO and CFO.	10-Q	3/31/09	10.39	
10.30	Form of Restricted Stock Unit Agreement for all other executive officers.	10-Q	3/31/09	10.40	
10.31	Confirmation for Base Capped Call Transaction dated as of June 9, 2009 between Equinix, Inc. and Deutsche Bank AG, London Branch.	8-K	6/12/09	10.1	
10.32	Confirmation for Additional Capped Call Transaction dated as of June 9, 2009 between Equinix, Inc. and Deutsche Bank AG, London Branch.	8-K	6/12/09	10.2	
10.33	Master Terms and Conditions for Capped Call Transactions dated as of June 9, 2009 between Equinix, Inc. and Deutsche Bank AG, London Branch.	8-K	6/12/09	10.3	
10.34	Confirmation for Base Capped Call Transaction dated as of June 9, 2009 between Equinix, Inc. and JPMorgan Chase Bank, National Association, London Branch.	8-K	6/12/09	10.4	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.35	Confirmation for Base Capped Call Transaction dated as of June 9, 2009 between Equinix, Inc. and JPMorgan Chase Bank, National Association, London Branch.	8-K	6/12/09	10.5	
10.36	Master Terms and Conditions for Capped Call Transactions dated as of June 9, 2009 between Equinix, Inc. and JPMorgan Chase Bank, National Association, London Branch.	8-K	6/12/09	10.6	
10.37	Confirmation for Base Capped Call Transaction dated as of June 9, 2009 between Equinix, Inc. and Goldman, Sachs & Co.	8-K	6/12/09	10.7	
10.38	Confirmation for Additional Capped Call Transaction dated as of June 9, 2009 between Equinix, Inc. and Goldman, Sachs & Co.	8-K	6/12/09	10.8	
10.39	Master Terms and Conditions for Capped Call Transactions dated as of June 9, 2009 between Equinix, Inc. and Goldman, Sachs & Co.	8-K	6/12/09	10.9	
10.40	Turn Key Data Center Lease by and between Digital Lakeside, LLC and Equinix Operating Co., Inc., dated as of July 10, 2009.	10-Q	9/30/09		
10.41	Equinix, Inc. 2010 Incentive Plan.				X
10.42	Addendum to international assignment letter agreement by and between Eric Schwartz and Equinix Operating Co., Inc., dated February 17, 2010.				X
10.43	Facility Agreement, by and among Equinix Australia Pty Ltd., Equinix Hong Kong Limited, Equinix Singapore Pte. Ltd., Equinix Pacific Pte. Ltd and Equinix Japan K.K., as borrowers, DBS Bank Ltd., ING Bank, N.V., Singapore Branch, The Royal Bank of Scotland N.V. and GE Commercial Finance (Hong Kong) Ltd., as Joint Mandated Lead Arrangers and as Joint Mandated Bookrunners, the lenders set forth therein, and The Royal Bank of Scotland N.V., as Facility Agent, dated March 10, 2010.				X

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.44	Amendment No. 1 to Commercial Lease, dated April 10, 2010, by and between Equinix Paris SAS and Digital Realty (Paris 2) SCI, and related guarantee by Equinix, Inc.				X
21.1	Subsidiaries of Equinix, Inc.				X
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
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.

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: April 28, 2010

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

INDEX TO EXHIBITS

Exhibit Number	Description of Document
4.8	Indenture dated March 3, 2010 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.
4.9	Form of 8.125% Senior Note Due 2018 (see Exhibit 4.8).
10.41	Equinix, Inc. 2010 Incentive Plan.
10.42	Addendum to international assignment letter agreement by and between Eric Schwartz and Equinix Operating Co., Inc., dated February 17, 2010.
10.43	Facility Agreement, by and among Equinix Australia Pty Ltd., Equinix Hong Kong Limited, Equinix Singapore Pte. Ltd., Equinix Pacific Pte. Ltd and Equinix Japan K.K., as borrowers, DBS Bank Ltd., ING Bank, N.V., Singapore Branch, The Royal Bank of Scotland N.V. and GE Commercial Finance (Hong Kong) Ltd., as Joint Mandated Lead Arrangers and as Joint Mandated Bookrunners, the lenders set forth therein, and The Royal Bank of Scotland N.V., as Facility Agent, dated March 10, 2010.
10.44	Amendment No,1 to Commercial Lease, dated April 10, 2010, by and between Equinix Paris SAS and Digital Realty (Paris 2) SCI, and related guarantee by Equinix, Inc.
21.1	Subsidiaries of Equinix, Inc.
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.

Exhibit 4.8

EQUINIX, INC.

8.125% Senior Notes due 2018

INDENTURE

March 3, 2010

U.S. BANK NATIONAL ASSOCIATION

Trustee

CROSS-REFERENCE TABLE*

Trust Indenture Act Section		Indenture Section
310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	N.A.
	(a)(4)	N.A.
	(a)(5)	7.10
	(b)	7.08; 7.10; 12.02
	(c)	N.A.
311	(a)	7.11
	(b)	7.11
	(c)	N.A.
312	(a)	2.05
	(b)	12.03
	(c)	12.03
313	(a)	7.06
	(b)	7.06; 7.07
	(b)(1)	N.A.
	(b)(2)	7.06; 7.07
	(c)	7.06; 12.02
	(d)	7.06
314	(a)	4.03; 4.04; 12.02; 12.05
	(a)(4)	4.04; 12.02
	(b)	N.A.
	(c)(1)	12.04
	(c)(2)	12.04
	(c)(3)	N.A.
	(d)	N.A.
	(e)	12.05
	(f)	N.A.
315	(a)	7.01
	(b)	7.05; 12.02
	(c)	7.01
	(d)	7.01
	(e)	6.11
316	(a)(last sentence)	2.09
	(a)(1)(A)	6.05
	(a)(1)(B)	6.04
	(a)(2)	N.A.
	(b)	6.07
	(c)	2.12
317	(a)(1)	6.08
	(a)(2)	6.09
	(b)	2.04
318	(a)	12.01
	(b)	N.A.
	(c)	12.01

N.A. means not applicable.

* This Cross Reference Table is not part of this Indenture.

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This Indenture, dated as of March 3, 2010, is by and between EQUINIX, INC., a Delaware corporation (the "*Company*") and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "*Trustee*").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of (i) the Company's 8.125% Senior Notes due 2018 (the "*Initial Notes*"); and (ii) the Additional Notes (as defined herein) (together with the Initial Notes, the "*Notes*"):

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions*.

"*2012 Convertible Notes*" means the $250,000,000 aggregate principal amount of the Company's 2.50% Convertible Subordinated Notes due April 15, 2012.

"*2016 Convertible Notes*" means the $373,750,000 aggregate principal amount of the Company's 4.75% Convertible Subordinated Notes due June 15, 2016.

"*Acquired Indebtedness*" means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary of the Company or at the time it merges or consolidates with or into the Company or any of its Subsidiaries or that is assumed in connection with the acquisition of assets from such Person and in each case not incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition, merger or consolidation.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Sections 2.02 and 2.14 hereof, as part of the same series of Notes issued on the date hereof.

"*Affiliate*" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" 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; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

"*Agent*" means any Registrar, co-registrar, Paying Agent or additional paying agent.

"*Applicable Premium*" means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.0% of the principal amount of the Note; and

(2) the excess of:

(a) the present value at such Redemption Date of (i) the redemption price of the Note at March 1, 2014 (such redemption price being set forth in the table appearing under Section 3.07), *plus* (ii) all required interest payments due on the Note through March 1, 2014 (excluding accrued but unpaid interest, if any, to, but not including, the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over

(b) the principal amount of the Note, if greater.

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary that apply to such transfer or exchange.

"*Asset Acquisition*" means (1) an Investment by the Company or any Restricted Subsidiary of the Company in any other Person pursuant to which such Person shall become a Restricted Subsidiary of the Company or any Restricted Subsidiary of the Company, or shall be merged with or into the Company or any Restricted Subsidiary of the Company, or (2) the acquisition by the Company or any Restricted Subsidiary of the Company of the assets of any Person (other than a Restricted Subsidiary of the Company) that constitute all or substantially all of the assets of such Person or comprises any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business.

"*Asset Sale*" means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Company or any of its Restricted Subsidiaries (including any Sale and Leaseback Transaction) to any Person other than the Company or a Wholly Owned Restricted Subsidiary of the Company of: (1) any Capital Stock of any Restricted Subsidiary of the Company; or (2) any other property or assets of the Company or any Restricted Subsidiary of the Company (other than Capital Stock or Indebtedness of any Unrestricted Subsidiary) other than in the ordinary course of business; *provided* that asset sales or other dispositions shall not include: (a) a transaction or series of related transactions for which the Company or its Restricted Subsidiaries receive aggregate consideration of less than $10.0 million; (b) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company as permitted under Section 5.01; (c) any Restricted Payment permitted by Section 4.07 or that constitutes a Permitted Investment; (d) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof; (e) disposals or replacements of obsolete or worn out equipment; (f) the grant of Liens not prohibited by this Indenture; (g) the licensing of intellectual property; (h) dispositions of accounts receivable to local distribution companies under guaranteed receivables agreements entered into in the ordinary course of business; (i) the sale of inventory, receivables and other current assets in the ordinary course of business; (j) Sale and Leaseback Transactions permitted under clause 14 of the definition of "Permitted Indebtedness"; (k) the disposition of cash or Cash Equivalents in the ordinary course of business; and (l) any disposition by a Restricted Subsidiary to the Company or by the Company or its Restricted Subsidiary to a Restricted Subsidiary.

"*Attributable Debt*" means, in respect of a Sale and Leaseback Transaction, the present value, discounted at the interest rate implicit in the sale and leaseback transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in the sale and leaseback transaction.

"*Bank Facility*" means any credit agreement, including the Loan Agreement dated February 12, 2009 among Bank of America, N.A., Equinix, Inc. and Equinix Operating Co., Inc., as amended, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreements may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including one or more credit agreements, loan agreements or similar agreements or indentures extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the amount of available borrowings thereunder or adding Restricted Subsidiaries of the Company as additional borrowers or guarantors thereunder) all or any portion of the Indebtedness under such agreement or agreements or any successor or replacement agreement or agreements and whether by the same or any other agent, holders, lender or group of lenders.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "*person*" (as that term is used in Section 13(d)(3) of the Exchange Act), such "*person*" will be deemed to have beneficial ownership of all securities that such "*person*" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns," "Beneficially Owned" and "Beneficial Ownership," have a corresponding meaning.

"*Board of Directors*" means, as to any Person, the board of directors (or similar governing body) of such Person or any duly authorized committee thereof.

"*Board Resolution*" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Stock*" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing; and

(2) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing.

"*Capitalized Lease Obligations*" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"*Cash Equivalents*" means:

(a) debt securities denominated in euro, pounds sterling or U.S. dollars to be issued or directly and fully guaranteed or insured by the government of a Participating Member State, the U.K. or the U.S., as applicable, where the debt securities have not more than twelve months to final maturity and are not convertible into any other form of security;

(b) commercial paper denominated in euro, pounds sterling or U.S. dollars maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least P1 from Moody's and A1 from S&P;

(c) certificates of deposit denominated in euro, pounds sterling or U.S. dollars having not more than twelve months to maturity issued by a bank or financial institution incorporated or having a branch in a Participating Member State in the United Kingdom or the United States, *provided* that the bank is rated P1 by Moody's or A1 by S&P;

(d) any cash deposit denominated in euro, pounds sterling or U.S. dollars with any commercial bank or other financial institution, in each case whose long term unsecured, unsubordinated debt rating is at least Aa3 by Moody's or AA by S&P;

(e) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above entered into with any bank or financial institution meeting the qualifications specified in clause (d) above; and

(f) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (a) through (e) above.

"*Change of Control*" means the occurrence of one or more of the following events:

(1) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a "*Group*"), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Indenture);

(2) the approval by the holders of Capital Stock of the Company of any plan or proposal for the liquidation or dissolution of the Company (whether or not otherwise in compliance with the provisions of this Indenture); or

(3) any Person or Group shall become the owner, directly or indirectly, beneficially or of record, of shares representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Company.

"*Commission*" means the United States Securities and Exchange Commission.

"*Common Stock*" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person's common stock, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common stock.

"*Consolidated Depreciation, Amortization and Accretion Expense*" means with respect to any Person for any period, the total amount of depreciation and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and accretion expense, including the amortization of deferred financing fees or costs of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"*Consolidated EBITDA*" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

(a) increased (without duplication) by the following, in each case to the extent deducted in determining Consolidated Net Income for such period:

(1) provision for taxes based on income or profits or capital, including, without limitation, federal, state, franchise and similar taxes and foreign withholding taxes (including any levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a governmental agency, and any related interest, penalty, charge, fee or other amount) of such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income; plus

(2) Consolidated Interest Expense of such Person for such period to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income; plus

(3) Consolidated Depreciation, Amortization and Accretion Expense of such Person for such period to the extent that the same were deducted (and not added back) in computing Consolidated Net Income; plus

(4) any expenses or charges (other than depreciation or amortization expense) related to any Equity Offering or the incurrence of Indebtedness permitted to be incurred in accordance with this Indenture (including a refinancing thereof) (whether or not successful), in each case, deducted (and not added back) in computing Consolidated Net Income; plus

(5) any other Non-cash Charges, including any provisions, provision increases, write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such Non-cash Charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent), and excluding amortization of a prepaid cash item that was paid in a prior period; plus

(6) any costs or expenses incurred by the Company or a Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or stockholder agreement, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of the Company or net cash proceeds of an issuance of Equity Interest of the Company (other than Disqualified Capital Stock); plus

(7) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (b) below for any previous period and not added back; plus

(8) any net loss from disposed or discontinued operations; plus

(9) any net unrealized loss (after any offset) resulting in such period from obligations under any Currency Agreements and the application of FASB Standard No.

139 “Financial Instruments: Recognition and Measurement”; *provided* that to the extent any such Currency Agreement relates to items included in the preparation of the income statement (as opposed to the balance sheet, as reasonably determined by the Company), the realized loss on a Currency Agreement shall be included to the extent the amount of such hedge gain or loss was excluded in a prior period; plus

(10) any net unrealized loss (after any offset) resulting in such period from (A) currency translation or exchange losses including those (x) related to currency remeasurements of Indebtedness and (y) resulting from hedge agreements for currency exchange risk and (B) changes in the fair value of Indebtedness resulting from changes in interest rates; plus

(11) the amount of any minority interest expense (less the amount of any cash dividends paid in such period to holders of such minority interests); and

(b) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(1) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase Consolidated EBITDA in such prior period;

(2) any net gain from disposed or discontinued operations;

(3) any net unrealized gain (after any offset) resulting in such period from obligations under any Currency Agreements and the application of FASB Standard No. 139 “Financial Instruments: Recognition and Measurement”; *provided* that to the extent any such Currency Agreement relates to items included in the preparation of the income statement (as opposed to the balance sheet, as reasonably determined by the Company), the realized gain on a Currency Agreement shall be included to the extent the amount of such hedge gain or loss was excluded in a prior period; plus

(4) any net unrealized gains (after any offset) resulting in such period from (A) currency translation or exchange gains including those (x) related to currency remeasurements of Indebtedness and (y) resulting from hedge agreements for currency exchange risk and (B) changes in the fair value of Indebtedness resulting from changes in interest rates.

“*Consolidated Fixed Charge Coverage Ratio*” means, with respect to any Person, the ratio of Consolidated EBITDA of such Person during the four full fiscal quarters (the “*Four Quarter Period*”) ending prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio for which financial statements are available (the “*Transaction Date*”) to Consolidated Fixed Charges of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated EBITDA” and “Consolidated Fixed Charges” shall be calculated after giving effect on a pro forma basis for the period of such calculation to:

(1) the incurrence or repayment of any Indebtedness of such Person or any of its Restricted Subsidiaries (and the application of the proceeds thereof) giving rise to the need to make such calculation and any incurrence or repayment of other Indebtedness (and the application of

the proceeds thereof), other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to working capital facilities, occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period; and

(2) any asset sales or other dispositions or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of such Person or one of its Restricted Subsidiaries (including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition) incurring, assuming or otherwise being liable for Acquired Indebtedness and also including any Consolidated EBITDA (including any pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X promulgated under the Exchange Act) attributable to the assets which are the subject of the Asset Acquisition or asset sale or other disposition during the Four Quarter Period) occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such asset sale or other disposition or Asset Acquisition (including the incurrence, assumption or liability for any such Acquired Indebtedness) occurred on the first day of the Four Quarter Period. If such Person or any of its Restricted Subsidiaries directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness as if such Person or any Restricted Subsidiary of such Person had directly incurred or otherwise assumed such guaranteed Indebtedness.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio":

(i) interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on the Transaction Date; and

(ii) notwithstanding clause (i) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Interest Swap Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

"*Consolidated Fixed Charges*" means, with respect to any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense; plus

(2) the product of (x) the amount of all dividend payments on any series of Preferred Stock of such Person and, to the extent permitted under this Indenture, its Restricted Subsidiaries (other than dividends paid in Qualified Capital Stock and other than dividends paid by a Restricted Subsidiary of such Person to such Person or to a Wholly Owned Restricted Subsidiary of such Person) paid, accrued or scheduled to be paid or accrued during such period times (y) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective consolidated federal, state and local income tax rate of such Person, expressed as a decimal.

"*Consolidated Interest Expense*" means, with respect to any Person for any period, the sum of, without duplication:

(1) the aggregate of the interest expense of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, including without limitation: (a) any amortization of debt discount and the amortization or write-off of deferred financing costs, including commitment fees; (b) the net costs under Interest Swap Obligations; (c) all capitalized interest; (d) non-cash interest expense (other than non-cash interest on any convertible or exchangeable debt issued by the Company that exists by virtue of the bifurcation of the debt and equity components of such convertible or exchangeable notes and the application of FSP APB 14-1 (or related accounting pronouncement(s))); (e) commissions, discounts and other fees and charges owed with respect to letters of credit and banker's acceptance financing; (f) dividends with respect to Disqualified Capital Stock; (g) dividends with respect to Preferred Stock of Restricted Subsidiaries of such Person; (h) imputed interest with respect to sale and leaseback transactions; and (i) the interest portion of any deferred payment obligation; *plus*

(2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Restricted Subsidiaries during such period as determined on a consolidated basis in accordance with GAAP; *less*

(3) interest income for such period.

"*Consolidated Net Income*" means, with respect to any Person, for any period, the aggregate net income (or loss) of such Person and its Restricted Subsidiaries for such period on a consolidated basis, determined in accordance with GAAP; *provided* that there shall be excluded therefrom (without duplication):

(1) any after tax effect of extraordinary, non-recurring or unusual gains or losses (including all fees and expenses relating thereto) or expenses (including relating to the Transaction);

(2) any net after tax gains or losses on disposal of disposed, abandoned or discontinued operations;

(3) any after tax effect of gains or losses (including all fees and expenses relating thereto) attributable to sale, transfer, license, lease or other disposition of assets or abandonments or the sale, transfer or other disposition of any Equity Interest of any Person other than in the normal course of business;

(4) the net income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, except to the extent of cash dividends or distributions paid to the Company or to a Restricted Subsidiary of the Company by such Person;

(5) any after tax effect of income (loss) from the early extinguishment of (1) Indebtedness, (2) obligations under any Currency Agreement or (3) other derivative instruments;

(6) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to intangible assets, long-lived assets, investments in debt and equity securities or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(7) any non-cash compensation charge or expense including any such charge arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights;

(8) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction, amendment or modification of any debt instrument;

(9) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued);

(10) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person's assets, any earnings of the successor entity prior to such consolidation, merger or transfer of assets;

(11) the net income (but not loss) of any Restricted Subsidiary of the referent Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is restricted by contract, operation of law or otherwise; and

(12) acquisition-related costs resulting from the application of Statements of Financial Accounting Standards No. 141(r).

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, but without duplication, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture (in each case, whether or not non-recurring).

Notwithstanding the foregoing, for the purpose of Section 4.07 only (other than clause (iii)(z) of Section 4.07(a)), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Investments (other than Permitted Investments) made by Company and its Restricted Subsidiaries, any repurchases and redemptions of Investments (other than Permitted Investments) from the Company and its Restricted Subsidiaries, any repayments of loans and advances which constitute Investments (other than Permitted Investments) by the Company or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (iii)(z) of Section 4.07(a).

"*Corporate Trust Office of the Trustee*" will be at the address of the Trustee specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Company.

"*Currency Agreement*" means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect the Company or any Restricted Subsidiary of the Company against fluctuations in currency values.

"*Custodian*" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"*Default*" means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Disqualified Capital Stock*" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control or an Asset Sale), matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control or an Asset Sale), in each case, on or prior to the final maturity date of the Notes.

"*Domestic Restricted Subsidiary*" means a Restricted Subsidiary incorporated or otherwise organized or existing under the laws of the United States, any state thereof or the District of Columbia.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"*Equity Offering*" means any public or private sale of Common Stock or Preferred Stock of the Company (excluding Disqualified Capital Stock), other than:

(a) public offerings with respect to the Company's or any direct or indirect parent company's common stock registered on Form S-4 or Form S-8 (or similar forms under non-U.S. law);

(b) issuances to any Subsidiary of the Company;

(c) issuances pursuant to the exercise of options or warrants outstanding on the date hereof;

(d) issuances upon conversion of securities convertible into Common Stock outstanding on the date hereof;

(e) issuances in connection with an acquisition of property in a transaction entered into on an arm's-length basis; and

(f) issuances pursuant to employee stock plans.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"*fair market value*" means, with respect to any asset or property, the price which could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair market value shall be determined by the Board of Directors of the Company or any duly appointed officer of the Company or a Restricted Subsidiary, as applicable, acting reasonably and in good faith and, in respect of any asset or property with a fair market value in excess of $15.0 million, shall be determined by the Board of Directors of the Company and shall be evidenced by a Board Resolution of the Board of Directors of the Company delivered to the Trustee.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Issue Date.

"*Global Note Legend*" means the legend set forth in Section 2.06(f) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Global Notes deposited with or on behalf of and registered in the name of the Depository or its nominee, substantially in the form of Exhibit A hereto and that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Section 2.01 hereof.

"*Government Securities*" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America;

which, in either case, are not callable or redeemable at the option of the issuer thereof, and also includes a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Security or a specific payment of principal of or interest on any such Government Security held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Security or the specific payment of principal of or interest on the Government Security evidenced by such depository receipt.

"*Guarantee*" means a guarantee of the Notes by a Guarantor.

"*Guarantor*" means each of the Company's Domestic Restricted Subsidiaries that in the future executes a notation of guarantee or a supplemental indenture in which such Domestic Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Guarantor; *provided* that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its respective Guarantee is released in accordance with the terms of this Indenture.

"*Holder*" means a Person in whose name a Note is registered.

"*Indebtedness*" means with respect to any Person, without duplication:

(1) all Obligations of such Person for borrowed money;

(2) all Obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all Capitalized Lease Obligations and all Attributable Debt of such Person;

(4) all Obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all Obligations under any title retention agreement (but excluding (i) trade accounts payable and other accrued liabilities arising in the ordinary course of business that are not overdue by 120 days or more or are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and (ii) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP);

(5) all Obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit (A) securing Obligations (other than Obligations described in (1)-(4) above) entered into the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the fifth Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit) or (B) that are otherwise cash collateralized;

(6) guarantees and other contingent obligations in respect of Indebtedness referred to in clauses (1) through (5) above and clause (8) below;

(7) all Obligations of any other Person of the type referred to in clauses (1) through (6) that are secured by any lien on any property or asset of such Person, the amount of such Obligation being deemed to be the lesser of the fair market value of such property or asset or the amount of the Obligation so secured;

(8) all Obligations under Currency Agreements and Interest Swap Obligations of such Person; and

(9) all Disqualified Capital Stock issued by such Person or Preferred Stock issued by such Person's non-Domestic Restricted Subsidiaries which are not Guarantors with the amount of Indebtedness represented by such Disqualified Capital Stock or Preferred Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any.

For purposes hereof, the "maximum fixed repurchase price" of any Disqualified Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock, such fair market value shall be determined reasonably and in good faith by the Board of Directors of the issuer of such Disqualified Capital Stock.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Independent Financial Advisor*" means a firm: (1) that does not, and whose directors, officers and employees or Affiliates do not, have a direct or indirect financial interest in the Company; and (2) that, in the judgment of the Board of Directors of the Company, is otherwise independent and qualified to perform the task for which it is to be engaged.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Note through a Participant.

"*Interest Swap Obligations*" means the obligations of any Person pursuant to any arrangement with any other Person, whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a floating or a fixed rate of interest on a stated notional amount in exchange for periodic payments made by such other Person calculated by applying a fixed or a floating rate of interest on the same notional amount and shall include, without limitation, interest rate swaps, caps, floors, collars and similar agreements.

"*Initial Notes*" means the first $750.0 million aggregate principal amount of the Company's 8.125% Senior Notes due 2018 issued under this Indenture on the date hereof.

"*Investment*" means, with respect to any Person, any direct or indirect loan or other extension of credit (including, without limitation, a guarantee) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any other Person. "Investment" shall exclude extensions of trade credit by the Company and its Restricted Subsidiaries on commercially reasonable terms in accordance with normal trade practices of the Company or such Restricted Subsidiary, as the case may be, and, in the case of the Company and its Restricted Subsidiaries, intercompany loans, advances or Indebtedness having a term not exceeding 364 days and made in the ordinary course of business consistent with past practice. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Common Stock of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Common Stock of such Restricted Subsidiary not sold or disposed of. The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Company or a restricted subsidiary in respect of such Investment.

"*Investment Grade Rating*" means a rating equal to or higher than Baa3 (or equivalent) by Moody's or BBB- (or equivalent) by S&P, or an equivalent rating by any other Rating Agency.

"*Issue Date*" means March 3, 2010.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the State of New York or the Corporate Trust Office of the Trustee are authorized or required by law to close. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

"*Lien*" means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

"*Material Subsidiary*" means a "significant subsidiary" as defined in Rule 1.02(w) of Regulation S-X under the Securities Act.

"*Moody's*" means Moody's Investors Service, Inc., or any successor to the rating agency business thereof.

"*Net Cash Proceeds*" means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents (other than the portion of any such deferred payment constituting interest) received by the Company or any of its Restricted Subsidiaries from such Asset Sale net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) repayment of Indebtedness (other than Indebtedness under the Bank Facility) that is secured by the property or assets that are the subject of such Asset Sale; and

(4) appropriate amounts to be provided by the Company or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale.

"*Net Income*" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends or distributions.

"*Non-cash Charges*" means, with respect to any Person, (a) losses on asset sales, disposals or abandonments, (b) any impairment charge or asset write-off related to intangible assets, long-lived assets, and investments in debt and equity securities pursuant to GAAP, (c) all losses from investments recorded using the equity method, (d) stock-based awards compensation expense, and (e) other non-cash charges (*provided* that if any non-cash charges referred to in this clause (e) represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period).

"*Notes*" means the Initial Notes issued on the date hereof and any Additional Notes. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"*Officer*" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer or Secretary of the Company.

"*Officers' Certificate*" means a certificate signed by two Officers of the Company, at least one of whom shall be the principal executive officer or principal financial officer of the Company, and delivered to the Trustee.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Trustee or to the Company or any Subsidiary of the Company.

"*Pari Passu Indebtedness*" means any Indebtedness of the Company or any Guarantor that ranks *pari passu* in right of payment with the Notes or any Guarantee of such Guarantor, as applicable.

"*Participant*" means, with respect to the Depositary, a Person who has an account with the Depositary.

"*Participating Member State*" means each state, so described in any European Monetary Union legislation, which was a participating member state on December 31, 2003.

"*Permitted Asia Pacific Debt*" means up to $200.0 million of Indebtedness at any one time outstanding incurred by one or more Restricted Subsidiaries constituting part of the Company's Asia Pacific region, which may be incurred under one or more Bank Facilities.

"*Permitted Investments*" means:

(1) Investments by the Company or any Restricted Subsidiary of the Company in any Person that is or will become immediately after such Investment a Restricted Subsidiary of the Company or that will merge or consolidate into the Company or a Restricted Subsidiary of the Company and other Investments to the extent constituting intercompany Indebtedness permitted under clause 6 or 7 of the definition of "Permitted Indebtedness";

(2) Investments in the Company by any Restricted Subsidiary of the Company; *provided* that any Indebtedness evidencing such Investment and held by a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary that is a Guarantor is unsecured and subordinated, pursuant to a written agreement, to the Company's obligations under the Notes and this Indenture;

(3) Investments in cash and Cash Equivalents;

(4) loans and advances to employees, directors and officers of the Company and its Restricted Subsidiaries in the ordinary course of business for bona fide business purposes not in excess of $5.0 million at any one time outstanding;

(5) Currency Agreements and Interest Swap Obligations entered into in the ordinary course of the Company's or its Restricted Subsidiaries' businesses and otherwise in compliance with this Indenture;

(6) additional Investments (other than any Investments in any direct or indirect parent company of the Company) not to exceed 5.0% of Total Assets at any one time outstanding;

(7) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers or in good faith settlement of delinquent obligations of such trade creditors or customers;

(8) Investments made by the Company or its Restricted Subsidiaries as a result of consideration received in connection with an Asset Sale made in compliance with Section 4.11;

(9) Investments resulting from the creation of Liens on the assets of the Company or any of its Restricted Subsidiaries in compliance with Section 4.13;

(10) Investments represented by guarantees that are otherwise permitted under this Indenture;

(11) Investments the payment for which is Qualified Capital Stock of the Company;

(12) Investments existing as of the Issue Date, and any extension, modification or renewal of any such Investments, but only to the extent not involving additional advances, contributions or other Investments of cash or other assets or other increases thereof (other than as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities), in each case, pursuant to the terms of such Investment as in effect on the Issue Date;

(13) Investments in Permitted Joint Ventures, not to exceed 2.5% of Total Assets at any one time outstanding;

(14) receivables owing to the Company or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided* that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(15) lease, utility and other similar deposits in the ordinary course of business;

(16) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Restricted Subsidiary or in satisfaction of judgments; and

(17) capped call(s), call spread(s) or bond hedge and warrant transaction(s) entered into by the Company concurrently with the issuance of convertible or exchangeable debt to hedge the Company's stock price risk with respect to such debt that are deemed necessary or advisable to effect such hedge in the good faith judgment of the Board of Directors of the Company.

"*Permitted Joint Venture*" means any Person owned 50% or more by the Company and/or any of its Restricted Subsidiaries if (A) such Person is engaged in a business related to that of the Company or any Restricted Subsidiary and (B) the Company or any of its Restricted Subsidiaries has the right to appoint at least half of the Board of Directors of such Person.

"*Permitted Liens*" means the following types of Liens:

(1) Liens for taxes, assessments or governmental charges or claims either (a) not delinquent or (b) contested in good faith by appropriate proceedings and as to which the Company or its Restricted Subsidiaries shall have set aside on its books such reserves as may be required pursuant to GAAP;

(2) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen and other Liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

(3) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(4) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(5) easements, rights-of-way, zoning restrictions and other similar charges or encumbrances in respect of real property not interfering in any material respect with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(6) any interest or title of a lessor under any Capitalized Lease Obligation;*provided* that such Liens do not extend to any property or assets which is not leased property subject to such Capitalized Lease Obligation (other than other property that is subject to a separate lease from such lessor or any of its Affiliates);

(7) Liens securing Purchase Money Indebtedness incurred in the ordinary course of business;*provided* that (a) such Purchase Money Indebtedness shall not exceed the purchase price or other cost of such property or equipment and shall not be secured by any property or equipment of the Company or any Restricted Subsidiary of the Company other than the property and equipment so acquired or other property that was acquired from such seller or any of its Affiliates with the proceeds of Purchase Money Indebtedness and (b) the Lien securing such Purchase Money Indebtedness shall be created within 360 days of such acquisition;

(8) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(9) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other property relating to such letters of credit and products and proceeds thereof;

(10) Liens securing Interest Swap Obligations which Interest Swap Obligations relate to Indebtedness that is otherwise permitted under this Indenture;

(11) Liens securing Indebtedness under Currency Agreements;

(12) Liens securing Acquired Indebtedness incurred in accordance with Section 4.09;*provided* that

(a) such Liens secured such Acquired Indebtedness at the time of and prior to the incurrence of such Acquired Indebtedness by the Company or a Restricted Subsidiary of the Company and were not granted in connection with, or in anticipation of, the incurrence of such Acquired Indebtedness by the Company or a Restricted Subsidiary of the Company; and

(b) such Liens do not extend to or cover any property or assets of the Company or of any of its Restricted Subsidiaries other than the property or assets that secured the Acquired Indebtedness prior to the time such Indebtedness became Acquired Indebtedness of the Company or a Restricted Subsidiary of the Company and are no more favorable to the lienholders than those securing the Acquired Indebtedness prior to the incurrence of such Acquired Indebtedness by the Company or a Restricted Subsidiary of the Company;

(13) Liens on assets of a Restricted Subsidiary of the Company that is not a Guarantor to secure Indebtedness of such Restricted Subsidiary that is otherwise permitted under this Indenture;

(14) leases, subleases, licenses and sublicenses granted to others that do not materially interfere with the ordinary course of business of the Company and its Restricted Subsidiaries;

(15) banker's Liens, rights of setoff and similar Liens with respect to cash and Cash Equivalents on deposit in one or more bank accounts in the ordinary course of business;

(16) Liens arising from filing Uniform Commercial Code financing statements regarding leases;

(17) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of customs duties in connection with the importation of goods;

(18) Liens (a) on inventory held by and granted to a local distribution company in the ordinary course of business and (b) in accounts purchased and collected by and granted to a local distribution company that has agreed to make payments to the Company or any of its Restricted Subsidiaries for such amounts in the ordinary course of business;

(19) [*Intentionally Omitted*];

(20) Liens securing Indebtedness in respect of Sale and Leaseback Transactions permitted pursuant to clause 14 of the definition of "Permitted Indebtedness"; and

(21) Liens with respect to obligations (including Indebtedness) of the Company or any of its Restricted Subsidiaries otherwise permitted under this Indenture that do not exceed 2.0% of Total Assets at any one time outstanding.

"*Person*" means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

"*Preferred Stock*" of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

"*Prospectus*" means the Prospectus dated February 26, 2010 relating to the offering of the Initial Notes.

"*Public Debt Securities*" means any debt securities of the Company or any Domestic Restricted Subsidiary that (a) are or become registered with the Commission (whether pursuant to a registration statement under the Securities Act or otherwise pursuant to the Exchange Act) and/or (b) contain or require the Company or such Domestic Restricted Subsidiary to provide financial information substantially consistent with the financial information required by Regulation S-K and S-X promulgated under the Securities Act and Exchange Act.

"*Purchase Money Indebtedness*" means Indebtedness of the Company and its Restricted Subsidiaries incurred in the normal course of business for the purpose of financing all or any part of the purchase price, or the cost of installation, construction or improvement, of property or equipment.

"*Qualified Capital Stock*" means any Capital Stock that is not Disqualified Capital Stock.

"*Rating Agency*" means (1) each of Moody's and S&P and (2) if Moody's or S&P ceases to rate the Notes for reasons outside of the Company's control, a "nationally recognized statistical rating organization" within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, as the case may be.

"*Refinance*" means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. "*Refinanced*" and "*Refinancing*" shall have correlative meanings.

"*Refinancing Indebtedness*" means any Refinancing or successive Refinancings by the Company or any Restricted Subsidiary of the Company of Indebtedness incurred in accordance with Section 4.09 (other than pursuant to clauses 2, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16 or 18 of the definition of "Permitted Indebtedness"), in each case that does not:

(1) result in an increase in the aggregate principal amount of Indebtedness of such Person as of the date of such proposed Refinancing (plus the amount of all accrued interest and any premium required to be paid under the terms of the instrument governing such Indebtedness and plus the amount of reasonable fees and expenses incurred by the Company in connection with such Refinancing); or

(2) create Indebtedness with: (a) a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Indebtedness being Refinanced; or (b) a final maturity earlier than the final maturity of the Indebtedness being Refinanced; *provided* that (x) if such Indebtedness being Refinanced is Indebtedness solely of the Company (and is not otherwise guaranteed by a Restricted Subsidiary of the Company), then such Refinancing Indebtedness shall be Indebtedness solely of the Company and (y) if such Indebtedness being Refinanced is subordinate or junior to the Notes or any Guarantee, then such Refinancing Indebtedness shall be subordinate to the Notes or such Guarantee, as the case may be, at least to the same extent and in the same manner as the Indebtedness being Refinanced.

"*Responsible Officer*" means, when used with respect to the Trustee, an officer assigned to the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant treasurer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Indenture, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"*Restricted Subsidiary*" of any Person means any Subsidiary of such Person which at the time of determination is not an Unrestricted Subsidiary.

"*S&P*" means Standard & Poor's Ratings Group, Inc., or any successor to the rating agency business thereof.

"*Sale and Leaseback Transaction*" means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to the Company or a Restricted Subsidiary of any property, whether owned by the Company or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Company or such Restricted Subsidiary to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such Property.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Indebtedness*" means Indebtedness of the Company or any Guarantor that is subordinated or junior in right of payment to the Notes or any Guarantee of such Guarantor, as the case may be.

"*Subsidiary*" with respect to any Person, means:

(1) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person; or

(2) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person.

"*TIA*" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb).

"*Total Assets*" means, at the time of determination, the total consolidated assets of the Company and its Subsidiaries, as shown on the most recent balance sheet of the Company.

"*Treasury Rate*" means, as of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (or, if such Statistical Release is no longer published, any

publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to March 1, 2014; *provided*, *however*, that if the period from the Redemption Date to March 1, 2014 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trustee*" means U.S. Bank National Association until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Subsidiary*" of any Person means:

(1) any Subsidiary of such Person that at the time of determination shall be or continue to be designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Stock of, or owns or holds any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; *provided* that:

(i) the Company certifies to the Trustee that such designation complies with Section 4.07; and

(ii) each Subsidiary to be so designated and each of its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of its Restricted Subsidiaries.

For purposes of making the determination of whether any such designation of a Subsidiary as an Unrestricted Subsidiary complies with Section 4.07, the portion of the fair market value of the net assets of such Subsidiary of the Company at the time that such Subsidiary is designated as an Unrestricted Subsidiary that is represented by the interest of the Company and its Restricted Subsidiaries in such Subsidiary, in each case as determined in good faith by the Board of Directors of the Company, shall be deemed to be an Investment. Such designation will be permitted only if such Investment would be permitted at such time under Section 4.07.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if:

(a) immediately after giving effect to such designation, the Company is able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 4.09; and

(b) immediately before and immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the Board Resolution giving effect to such designation and an officers' certificate certifying that such designation complied with the foregoing provisions.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding aggregate principal amount of such Indebtedness into (b) the sum of the total of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment.

"*Wholly Owned Restricted Subsidiary*" means a Restricted Subsidiary, all of the Capital Stock of which (other than directors' qualifying shares) is owned by the Company or another Wholly Owned Restricted Subsidiary.

Section 1.02. *Other Definitions.*

Term	Defined in Section
"*Affiliate Transaction*"	4.12
"*Authentication Order*"	2.02
"*Change of Control Offer*"	4.15
"*Change of Control Payment Date*"	4.15
"*Covenant Defeasance*"	8.03
"*Covenant Suspension Event*"	4.18
"*DTC*"	2.03
"*Event of Default*"	6.01
"*incur*"	4.09
"*Legal Defeasance*"	8.02
"*Net Proceeds Offer*"	4.11
"*Net Proceeds Offer Amount*"	4.11
"*Net Proceeds Offer Payment Date*"	4.11
"*Net Proceeds Offer Trigger Date*"	4.11
"*Offer Amount*"	3.09
"*Offer Period*"	3.09
"*Paying Agent*"	2.03
"*Permitted Indebtedness*"	4.09
"*Purchase Date*"	3.09
"*Redemption Date*"	3.07
"*Registrar*"	2.03
"*Repurchase Offer*"	3.09
"*Restricted Payments*"	4.07
"*Reversion Date*"	4.18
"*Suspended Covenants*"	4.18
"*Suspension Date*"	4.18
"*Suspension Period*"	4.18

Section 1.03. *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"*indenture securities*" means the Notes;

"*indenture security Holder*" means a Holder of a Note;

"*indenture to be qualified*" means this Indenture;

"*indenture trustee*" or "*institutional trustee*" means the Trustee; and

"*obligor*" on the Notes means the Company and any successor obligor upon the Notes.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by Commission rule under the TIA have the meanings so assigned to them.

Section 1.04. *Rules of Construction*.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) words in the singular include the plural, and in the plural include the singular;

(e) "will" shall be interpreted to express a command;

(f) provisions apply to successive events and transactions;

(g) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time;

(h) "including" means including without limitation; and

(i) Section references are to Sections of this Indenture unless the context otherwise requires.

ARTICLE 2.

THE NOTES

Section 2.01. *Form and Dating*.

(a) *General*. The Notes and the Trustee's certificate of authentication will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note will be dated the date of its authentication. The Notes shall be in denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Global Notes*. Notes issued in global form will be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form will be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

Section 2.02. *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by an Officer (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes which may be issued in accordance with Section 2.14 hereof. The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited. However, the aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 2.03. *Registrar and Paying Agent.*

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange (*Registrar*"), where Notes may be presented for payment ("*Paying Agent*"). The Registrar will keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04. *Paying Agent to Hold Money in Trust.*

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company) will have no further liability for the money. If the Company acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee will serve as Paying Agent for the Notes.

Section 2.05. *Holder Lists*.

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company will furnish to the Trustee at least two Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company shall otherwise comply with TIA § 312(a).

Section 2.06. *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes.* A Global Note may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes will be exchanged by the Company for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes of which an officer of the Trustee has received actual notice and the Registrar has received a request from any beneficial owner of an interest in the Global Note to issue such Definitive Notes.

Upon the occurrence of either of the events in (1) or (2) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.07 and Section 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or Section 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a) hereof, *provided*, *however*, that beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Transfers of beneficial interests in the Global Notes will require compliance with paragraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchange of Beneficial Interests in Global Notes.* In connection with all transfers or exchanges of beneficial interests in Global Notes that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in Section 2.06(b)(2)(B)(i) above.

Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(g) hereof.

(c) *Transfer or Exchange of Beneficial Interests in Global Notes for Definitive Notes.* If any holder of a beneficial interest in an Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.* A Holder of a Definitive Note may exchange such Note for a beneficial interest in a Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Global Notes pursuant to Section 2.06(g) hereof.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. A Holder of Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of a Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Definitive Notes pursuant to the instructions from the Holder thereof, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount.

(f) *Global Note Legends.* Each Global Note will bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS GLOBAL NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("*DTC*") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY GLOBAL NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Section 2.10, Section 3.06, Section 3.09, Section 4.11, Section 4.15 and Section 9.05 hereof).

(3) Neither the Registrar nor the Company will be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date for the Note.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(7) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07. *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the ownership and destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08. *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds such Note; however, such Notes held by the Company or an Affiliate of the Company shall not be deemed to be outstanding for purposes of Section 3.07(b) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company or an Affiliate thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09. *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10. *Temporary Notes.*

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, will authenticate temporary Notes. Temporary Notes will be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Company will prepare and the Trustee will authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11. *Cancellation.*

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12. *Defaulted Interest.*

If the Company defaults in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) will deliver or cause to be delivered to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 2.13. *[Intentionally Omitted].*

Section 2.14. *Additional Notes.*

The Company shall be entitled to issue Additional Notes under this Indenture that shall have identical terms as the Initial Notes, other than with respect to the date of issuance, issue price and amount of interest payable on the first interest payment date applicable thereto; *provided* that such issuance is not prohibited by the terms of this Indenture, including Section 4.09 and Section 4.13; provided, further, that such Additional Notes are fungible with the Initial Notes for U.S. federal income tax purposes. The Initial Notes and any Additional Notes shall be treated as a single class for all purposes under this Indenture.

With respect to any Additional Notes, the Company shall set forth in a Board Resolution of its Board of Directors and in an Officers' Certificate, a copy of each of which shall be delivered to the Trustee, the following information:

(a) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture; and

(b) the issue price, the issue date, the CUSIP number of such Additional Notes, the first interest payment date and the amount of interest payable on such first interest payment date applicable thereto and the date from which interest shall accrue.

ARTICLE 3.

REDEMPTION AND PREPAYMENT

Section 3.01. *Notices to Trustee.*

If the Company elects to redeem Notes of any series pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 35 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth:

(a) the clause of this Indenture pursuant to which the redemption shall occur;

(b) the redemption date;

(c) the principal amount of the Notes of such series to be redeemed; and

(d) the redemption price.

Section 3.02. *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes (*provided* that where less than all of the Notes of a series are to be redeemed pursuant to Section 3.07, the Trustee will select Notes only from such series) for redemption or purchase on a pro rata basis or to the extent that selection on a pro rata basis is not practicable, by lot or by such method as the Trustee shall deem fair and appropriate; unless otherwise required by law or applicable stock exchange requirements. In the event of such partial redemption or purchase, the particular Notes to

be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in amounts of $2,000 or whole multiples of $1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03. *Notice of Redemption.*

Subject to the provisions of Section 3.09 hereof, at least 30 days but not more than 60 days before a redemption date, the Company will deliver a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 10 hereof.

The notice will identify the Notes to be redeemed and will state:

(a) the redemption date;

(b) the redemption price;

(c) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;

(d) the name and address of the Paying Agent;

(e) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(f) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(g) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes; and

(i) any condition to such redemption.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense*provided*, *however*, that the Company has delivered to the Trustee, at least two Business Days before notice of redemption is required to be delivered to Holders pursuant to this Section 3.03

(unless a shorter notice shall be agreed to by the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04. *Effect of Notice of Redemption.*

Once notice of redemption is delivered in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price (except as provided for in Section 3.07(b) and Section 3.07(d) hereof). A notice of redemption may not be conditional. The notice, if delivered in a manner provided herein, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

Section 3.05. *Deposit of Redemption or Purchase Price.*

Prior to 10:00 a.m. Eastern Time on the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money in immediately available funds sufficient to pay the redemption or purchase price of and accrued and unpaid interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption or purchase price of, and accrued and unpaid interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest to the redemption or purchase date shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06. *Notes Redeemed or Purchased in Part.*

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered. Notwithstanding any other provision in this Indenture to the contrary, neither an Opinion of Counsel nor an Officers' Certificate is required for the Trustee to authenticate such new Note.

Section 3.07. *Optional Redemption.*

(a) Other than as set forth in this Section 3.07, the Notes shall not be redeemable by the Company prior to maturity.

(b) At any time prior to March 1, 2013, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of the Notes (calculated giving effect to any issuance of Additional Notes) outstanding under this Indenture, at a redemption price equal to 108.125% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more Equity Offerings; *provided* that:

(1) at least 65% of the aggregate principal amount of the Notes (calculated giving effect to any issuance of Additional Notes) issued under this Indenture remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company and its subsidiaries); and

(2) the redemption must occur within 90 days of the date of the closing of such Equity Offering.

(c) On or after March 1, 2014, the Company may redeem all or a part of the Notes, on any one or more occasions, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date, if redeemed during the twelve-month period beginning on March 1 of the years indicated below:

Year	Percentage
2014	104.0625%
2015	102.0313%
2016 and thereafter	100.0000%

(d) At any time prior to March 1, 2014, the Company may also redeem all or a part of the Notes at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption (the "*Redemption Date*"), subject to the rights of Holders of record of Notes on the relevant record date to receive interest due on the relevant interest payment date.

(e) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 hereof.

Section 3.08. *Mandatory Redemption.*

The Company shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09. *Repurchase Offer.*

In the event that, pursuant to Section 4.11 or 4.15 hereof, the Company or a Restricted Subsidiary is required to commence an offer to all Holders to purchase Notes (a "*Repurchase Offer*"), it shall follow the procedures specified below.

The Repurchase Offer shall remain open for a period of at least 20 Business Days following its commencement, except to the extent that a shorter or longer period is permitted or required, as the case may be, by applicable law (the "*Offer Period*"). No later than five Business Days after the termination of the Offer Period (the "*Purchase Date*"), the Company will purchase at the Purchase Price (as determined in accordance with Section 4.11 and 4.15 hereof, as the case may be) the principal amount of Notes required to be purchased pursuant to Section 4.11 or 4.15 hereof, as the case may be (the "*Offer Amount*") and, if required, Pari Passu Indebtedness (on a pro rata basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Repurchase Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest to, but not including, the Payment Date will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Repurchase Offer.

Upon the commencement of a Repurchase Offer, the Company will deliver or cause to be delivered a notice to each of the Holders, with a copy to the Trustee. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Repurchase Offer. The notice, which will govern the terms of the Repurchase Offer, will state:

(a) that the Repurchase Offer is being made pursuant to this Section 3.09, and either Section 4.11 or 4.15 hereof, as applicable, and the length of time the Repurchase Offer will remain open;

(b) the Offer Amount, the purchase price and the Purchase Date;

(c) that any Note not tendered or accepted for payment will continue to accrue interest;

(d) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Repurchase Offer will cease to accrue interest after the Purchase Date;

(e) that Holders electing to have a Note purchased pursuant to a Repurchase Offer may elect to have Notes purchased in denominations of $2,000, or integral multiples of $1,000 in excess thereof;

(f) that Holders electing to have a Note purchased pursuant to any Repurchase Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Note completed, or transfer by book-entry transfer, to the Company, a Depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(g) that Holders will be entitled to withdraw their election if the Company, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(h) that, if the aggregate principal amount of Notes and Pari Passu Indebtedness surrendered by holders thereof exceeds the Offer Amount, the Trustee will select the Notes and such Pari Passu Indebtedness to be purchased on a pro rata basis based on the principal amount of Notes and such Pari Passu Indebtedness surrendered (with such adjustments as may be deemed appropriate by the Trustee so that only Notes in denominations of $2,000, or integral multiples of $1,000 in excess thereof, will be purchased); and

(i) that Holders whose Notes were purchased only in part will be issued new Notes of the applicable series equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, the Company will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Repurchase Offer or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.09. The Company, the Depositary or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon written request from the Company, will authenticate and deliver (or cause to be transferred by book entry) such new Note to such Holder in a principal amount equal to any unpurchased portion of the Note surrendered. Notwithstanding any other provision in this Indenture to the contrary, neither an Opinion of Counsel nor an Officers' Certificate is required for the Trustee to authenticate such new Note. Any Note not so accepted shall be promptly returned by the Company to the Holder thereof. The Company will publicly announce the results of the Repurchase Offer on or as soon as practicable after the Purchase Date.

Other than as specifically provided in this Section 3.09, Section 4.11 or Section 4.15 hereof, as applicable, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Section 3.01 through Section 3.06 hereof.

ARTICLE 4.

COVENANTS

Section 4.01. *Payment of Notes.*

The Company will pay or cause to be paid the principal of, premium, if any, and interest on, the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary, holds as of noon Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 2% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period), at such higher rate to the extent lawful. Interest will be computed daily on the Notes on the basis of a 360-day year comprised of twelve 30-day months.

Section 4.02. *Maintenance of Office or Agency.*

The Company will maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

Section 4.03. *Reports to Holders.*

Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company must provide the Trustee and, upon request, to any Holder of the Notes within fifteen (15) Business Days after filing, or in the event no such filing is required, within fifteen (15) Business Days after the end of the time periods specified in those sections with:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual financial statements only, a report thereon by the Company's certified independent accountants, and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports;

provided that the foregoing delivery requirements shall be deemed satisfied if the foregoing materials are available on the Commission's EDGAR system or on the Company's website within the applicable time period.

In addition, whether or not required by the Commission, the Company will, if the Commission will accept the filing, file a copy of all of the information and reports referred to in clauses (1) and (2) with the Commission for public availability within the time periods specified in the Commission's rules and regulations. In addition, the Company will make the information and reports available to securities analysts and prospective investors upon request. If the Company had any Unrestricted Subsidiaries during the relevant period, the Company will also provide to the Trustees and, upon request, to any Holder of the Notes, information sufficient to ascertain the financial condition and results of operations of Company and its Restricted Subsidiaries, excluding in all respects the Unrestricted Subsidiaries.

Notwithstanding anything herein to the contrary, the Company will not be deemed to have failed to comply with any of its obligations under this Section 4.03 for purposes of Section 6.01(c) hereof until 90 days after the date any report under this Section 4.03 is due.

Section 4.04. *Compliance Certificate.*

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year ending after the Issue Date, an officer's certificate stating that a review of the activities of the Company and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether each has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge, each entity has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, within five Business Days of any Officer becoming aware of any Default or Event of Default, an officer's certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05. *Taxes.*

The Company will pay, and shall cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies, except such as are contested in good faith and by appropriate negotiations or proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06. *Stay, Extension and Usury Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07. *Limitation on Restricted Payments.*

(a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any distribution (other than dividends or distributions payable in Qualified Capital Stock of the Company) on or in respect of shares of the Company's Capital Stock to holders of such Capital Stock;

(2) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Company;

(3) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, earlier than one year prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness; or

(4) make any Investment (other than Permitted Investments) (each of the foregoing actions set forth in clauses (1), (2), (3) and (4) being referred to as a "*Restricted Payment*"); if at the time of such Restricted Payment or immediately after giving effect thereto,

(i) a Default or an Event of Default shall have occurred and be continuing;

(ii) the Company is not able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 4.09(a); or

(iii) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made subsequent to the Issue Date (the amount expended for such purposes, if other than in cash, being the fair market value of such property as determined in good faith by the Board of Directors of the Company) shall exceed the sum of:

(w) 50% of the cumulative Consolidated Net Income (or if cumulative Consolidated Net Income shall be a loss, minus 100% of such loss) of the Company earned subsequent to January 1, 2010 and prior to or on the last day of the most recent quarter for which financial statements are available (treating such period as a single accounting period); plus

(x) 100% of the aggregate net cash proceeds received by the Company from any Person (other than a Subsidiary of the Company) from the issuance and sale subsequent to January 1, 2010 and on or prior to the date the Restricted Payment occurs (the "*Reference Date*") of Qualified Capital Stock of the Company or warrants, options or other rights to acquire Qualified Capital Stock of the Company (but excluding any debt security that is convertible into, or exchangeable for, Qualified Capital Stock, until such debt security has been converted into, or exchanged for, Qualified Capital Stock); plus

(y) without duplication of any amounts included in clause (iii)(x) above, 100% of the aggregate net cash proceeds of any equity contribution received by the Company from a holder of the Company's Capital Stock subsequent to the Issue Date and on or prior to the Reference Date (excluding, in the case of clauses (iii)(x) and (y), any net cash proceeds from any equity offering to the extent used to redeem the Notes in compliance with the provisions set forth under Section 3.07); plus

(z) without duplication, the sum of:

(A) the aggregate amount returned in cash on or with respect to Investments (other than Permitted Investments) made subsequent to the Issue Date whether through interest payments, principal payments, dividends or other distributions or payments;

(B) the net cash proceeds received by the Company or any of its Restricted Subsidiaries from the disposition of all or any portion of such Investments (other than to a Subsidiary of the Company);

(C) upon redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary (except to the extent the Investment constituted a Permitted Investment), the fair market value of such Subsidiary as of the date of such redesignation; and

(D) net cash dividends or other net cash distributions paid to the Company or any Restricted Subsidiary of the Company from any Unrestricted Subsidiaries of the Company;

provided that the sum of clauses (A), (B), (C) and (D) above shall not exceed the aggregate amount of all such Investments made subsequent to the Issue Date.

(b) Notwithstanding the foregoing, the provisions set forth in the immediately preceding paragraph do not prohibit:

(1) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration;

(2) the acquisition of any shares of Capital Stock of the Company, either (i) solely in exchange for shares of Qualified Capital Stock of the Company or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of shares of Qualified Capital Stock of the Company;

(3) the acquisition of any Subordinated Indebtedness either (i) solely in exchange for shares of Qualified Capital Stock of the Company, or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of (A) shares of Qualified Capital Stock of the Company or (B) Refinancing Indebtedness;

(4) repurchases by the Company of Common Stock of the Company from officers, directors and employees of the Company or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment of such employees or termination of their seat on the board of the Company in an aggregate amount not to exceed $5.0 million in any calendar year;

(5) repurchases of Capital Stock deemed to occur upon the exercise of stock options or warrants if such Capital Stock represents a portion of the exercise price and related statutory withholding taxes of such options or warrants;

(6) payments of dividends on Disqualified Capital Stock or Preferred Stock of any Restricted Subsidiary, the incurrence or issuance of which was permitted by this Indenture;

(7) cash payments in lieu of the issuance of fractional shares in connection with (i) the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company or (ii) a merger, consolidation, amalgamation or other combination involving the Company or any of its Subsidiaries;

(8) the retirement of any shares of Disqualified Capital Stock of the Company by conversion into, or by exchange for, shares of Disqualified Capital Stock of the Company or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) or other shares of Disqualified Capital Stock of the Company;

(9) in the event of a Change of Control, and if no Default or Event of Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Company or any Guarantor, in each case at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness, plus accrued and unpaid interest thereon; *provided* that prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Company (or a third party to the extent permitted by this Indenture) has made a Change of Control Offer with respect to the Notes offered hereby as a result of such Change of Control and has repurchased all Notes validly tendered and not withdrawn in connection with such Change of Control Offer;

(10) in the event of an Asset Sale that requires the Company to offer to repurchase Notes pursuant to Sections 3.09 and 4.11, and if no Default or Event of Default shall have occurred and be continuing, the payment, purchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness of the Company or any Guarantor, in each case at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness,

plus accrued and unpaid interest thereon; *provided* that (A) prior to such payment, purchase, redemption, defeasance or other acquisition or retirement, the Company has made an offer with respect to the Notes offered hereby pursuant to the provisions of Sections 3.09 and 4.11 and has repurchased all Notes validly tendered and not withdrawn in connection with such offer and (B) the aggregate amount of all such payments, purchases, redemptions, defeasances or other acquisitions or retirements of all such Subordinated Indebtedness may not exceed the amount of the Net Cash Proceeds Amount remaining after the Company has complied with Section 4.11(a)(3);

(11) the conversion, repayment, repurchase, redemption or other retirement (whether for cash or otherwise) of, or the payment of interest in respect of, the 2012 Convertible Notes and the 2016 Convertible Notes; and

(12) other Restricted Payments in an aggregate amount not to exceed $50.0 million after the Issue Date.

(c) In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date in accordance with clause (iii) of Section 4.07(a), amounts expended pursuant to clauses (1) and (4) of Section 4.07(b) shall be included in such calculation.

Section 4.08. *Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.*

The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Company to:

(a) pay dividends or make any other distributions on or in respect of its Capital Stock;

(b) make loans or advances to the Company or any other Restricted Subsidiary or to pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary of the Company; or

(c) transfer any of its property or assets to the Company or any other Restricted Subsidiary of the Company,

except in each case for such encumbrances or restrictions existing under or by reason of:

(1) applicable law, rule, regulation or order;

(2) this Indenture, the Notes and any Guarantees;

(3) customary non-assignment provisions of any contract or any lease, license or sublicense governing a leasehold interest of any Restricted Subsidiary of the Company;

(4) any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(5) agreements existing on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date;

(6) the Bank Facility, an agreement governing other Pari Passu Indebtedness permitted to be incurred under this Indenture or, with respect to a Restricted Subsidiary, an agreement evidencing Indebtedness incurred not in violation of this Indenture; *provided* that, with respect to any agreement governing such other Pari Passu Indebtedness or other Indebtedness, as the case may be, the provisions relating to such encumbrance or restriction are no less favorable to the Company or Restricted Subsidiary, as the case may be, in any material respect as determined by the Board of Directors of the Company in its reasonable and good faith judgment than the provisions contained in the Bank Facility, in the case of such other Pari Passu Indebtedness, and the agreements of such Restricted Subsidiary, in the case of such other Indebtedness, in each case as in effect on the Issue Date;

(7) restrictions on the transfer of assets subject to any Lien permitted under this Indenture imposed by the holder of such Lien;

(8) restrictions imposed by any agreement to sell assets or Capital Stock permitted under this Indenture to any Person pending the closing of such sale;

(9) such encumbrances or restrictions being binding on a Restricted Subsidiary at such time as such Restricted Subsidiary first becomes a Restricted Subsidiary, *provided* that such encumbrances or restrictions are not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

(10) customary provisions in joint venture agreements and other similar agreements (in each case relating solely to the respective joint venture or similar entity or the equity interests therein) entered into in the ordinary course of business;

(11) any amendment to or Refinancing of the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clauses (2), (4), (5) and (6) above; *provided* that the provisions relating to such encumbrance or restriction contained in any such agreement, taken as a whole, are no less favorable to the Company in any material respect as determined by the Board of Directors of the Company in their reasonable and good faith judgment than the provisions relating to such encumbrance or restriction contained in agreements referred to in such clauses (2), (4), (5) and (6);

(12) customary restrictions on leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby;

(13) restrictions imposed on cash or other deposits or net worth imposed by customers or required by insurance, surety or bonding companies, in each case, entered into in the ordinary course of business; and

(14) encumbrances and restrictions applicable only to Restricted Subsidiaries of the Company that are not Domestic Restricted Subsidiaries.

Section 4.09. *Limitation on Incurrence of Additional Indebtedness.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to, or otherwise become responsible for payment of (collectively, "*incur*") any Indebtedness (other than Permitted Indebtedness); *provided* that if no Default or Event of Default shall have occurred and be continuing at the time of or as a consequence of the incurrence of any such Indebtedness, the Company

or any of its Restricted Subsidiaries may incur Indebtedness if on the date of the incurrence of such Indebtedness, after giving effect to the incurrence thereof, the Consolidated Fixed Charge Coverage Ratio of the Company would have been greater than 2.0 to 1.0; *provided* that the amount of Indebtedness that may be incurred and Disqualified Capital Stock or Preferred Stock that may be issued pursuant to the foregoing by any Restricted Subsidiaries that are not Guarantors shall not exceed $100.0 million at any one time outstanding.

(b) Section 4.09(a) will not apply to (collectively, "*Permitted Indebtedness*"):

(1) Indebtedness under the Notes (other than any Additional Notes) issued on the Issue Date;

(2) Indebtedness incurred pursuant to any Bank Facility in an aggregate principal amount at any one time outstanding not to exceed the greater of (A) $150.0 million and (B) 5.0% of Total Assets;

(3) other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness under clauses 1, 2 or 18 of this Section 4.09(b)) reduced by the amount of any scheduled amortization payments, mandatory prepayments when actually paid, conversions or permanent reductions thereof;

(4) Interest Swap Obligations of the Company or any Restricted Subsidiary of the Company covering Indebtedness of the Company or any of its Restricted Subsidiaries; *provided* that such Interest Swap Obligations are entered into to protect the Company and its Restricted Subsidiaries from fluctuations in interest rates on its outstanding Indebtedness incurred without violation of the Indenture to the extent the notional principal amount of such Interest Swap Obligation does not, at the time of the incurrence thereof, exceed the principal amount of the Indebtedness to which such Interest Swap Obligation relates;

(5) Indebtedness under Currency Agreements; *provided* that in the case of Currency Agreements which relate to Indebtedness, such Currency Agreements do not increase the Indebtedness of the Company and its Restricted Subsidiaries outstanding other than as a result of fluctuations in foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

(6) Indebtedness of a Restricted Subsidiary of the Company owing to and held by the Company or a Wholly Owned Restricted Subsidiary of the Company for so long as such Indebtedness is held by the Company or a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture, in each case subject to no Lien held by a Person other than the Company or a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture; *provided* that if as of any date any Person other than the Company or a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture owns or holds any such Indebtedness or holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause 6 by the issuer of such Indebtedness;

(7) Indebtedness of the Company owing to and held by a Wholly Owned Restricted Subsidiary of the Company for so long as such Indebtedness is held by a Wholly Owned Restricted Subsidiary of the Company or the holder of a Lien permitted under the Indenture, in each case subject to no Lien other than a Lien permitted under the Indenture; *provided* that if as of any date any Person other than a Wholly Owned Restricted Subsidiary of the Company or the holder

of a Lien permitted under the Indenture owns or holds any such Indebtedness or any Person holds a Lien in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness under this clause 7 by the Company;

(8) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five Business Days of incurrence;

(9) Indebtedness of the Company or any of its Restricted Subsidiaries in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety, bid, appeal or similar bonds, completion guarantees, payment obligations in connection with self-insurance or similar obligations, and bank overdrafts (and letters of credit in respect thereof) in the ordinary course of business;

(10) Indebtedness represented by Capitalized Lease Obligations and Purchase Money Indebtedness of the Company and its Restricted Subsidiaries incurred in the ordinary course of business not to exceed (together with any Refinancing Indebtedness with respect thereto) 2.5% of Total Assets at any one time outstanding;

(11) Refinancing Indebtedness;

(12) Indebtedness of the Company or any Restricted Subsidiary consisting of "earn-out" obligations, guarantees, indemnities or obligations in respect of purchase price adjustments in connection with the acquisition or disposition of assets (including Capital Stock);

(13) Indebtedness incurred by the Company or any of the Restricted Subsidiaries in respect of letters of credit, bank guarantees or similar instruments issued or created in the ordinary course of business, including in respect of health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; *provided* that any reimbursement obligations in respect thereof are reimbursed within 60 days following the incurrence thereof;

(14) Indebtedness in respect of Sale and Leaseback Transactions in an aggregate amount not to exceed $50.0 million at any one time outstanding;

(15) Acquired Indebtedness, if on the date that such Indebtedness is incurred, after giving pro forma effect thereto, (A) the Company or such Restricted Subsidiary, as the case may be, shall be able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to Section 4.09(a), or (B) the Consolidated Fixed Charge Coverage Ratio of the Company would be no less than the Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to the date such Indebtedness is incurred;

(16) Additional Indebtedness of the Company and its Restricted Subsidiaries in an aggregate principal amount (or accreted value) not to exceed $100.0 million at any one time outstanding (which amounts may, but need not, be incurred in whole or in part under the Bank Facility); *provided* that the amount of Indebtedness that may be incurred pursuant to this clause 16 by any Restricted Subsidiaries that are not Guarantors shall not exceed $50.0 million at any one time outstanding;

(17) Indebtedness represented by guarantees by the Company or its Restricted Subsidiaries of Indebtedness otherwise permitted to be incurred under the Indenture; *provided* that, in the case of a guarantee by a Restricted Subsidiary, such Restricted Subsidiary complies with Section 4.16 to the extent applicable; and

(18) Permitted Asia Pacific Debt.

(c) For purposes of determining compliance with this Section 4.09, in the event that all or a portion of an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses 1 through 18 of Section 4.09(b) or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of Section 4.09(a), the Company shall, in its sole discretion, classify (or later reclassify) such item of Indebtedness, in whole or in part, in any manner that complies with this Section 4.09; *provided* that all Indebtedness outstanding under the Bank Facility up to the maximum amount permitted under clause 2 of Section 4.09(b) shall be deemed to have been incurred pursuant to clause 2 of Section 4.09(b). Accrual of interest, whether payable in cash or in kind, accretion or amortization of original issue discount, imputed interest, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock in the form of additional shares of the same class of Disqualified Capital Stock will not be deemed to be an incurrence of Indebtedness or an issuance of preferred stock of a Restricted Subsidiary or Disqualified Capital Stock, as applicable, for purposes of this Section 4.09.

(d) In addition, the Company will not, and will not permit any Restricted Subsidiary that becomes a Guarantor to, directly or indirectly, incur any Indebtedness which by its terms (or by the terms of any agreement governing such Indebtedness) is expressly subordinated in right of payment to any other Indebtedness of the Company or such Guarantor, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinate to the Notes or the applicable Guarantee, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Company or such Guarantor, as the case may be. For purposes of the foregoing, no Indebtedness will be deemed to be subordinated in right of payment to any other Indebtedness of the Company or any Guarantor solely by virtue of such Indebtedness being unsecured or by virtue of the fact that the holders of such Indebtedness have entered into one or more intercreditor agreements giving one or more of such holders priority over the other holders in the collateral held by them.

(e) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt; *provided* that if such Indebtedness is Refinancing Indebtedness incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that may be incurred pursuant to this Section 4.09 will not be deemed to be exceeded with respect to any outstanding Indebtedness due solely to the result of fluctuations in the exchange rates of currencies.

Section 4.10. *Limitation on Preferred Stock of Domestic Restricted Subsidiaries.*

The Company will not permit any of its Domestic Restricted Subsidiaries that are not Guarantors to issue any Preferred Stock (other than to the Company or to a Wholly Owned Restricted Subsidiary of the Company) or permit any Person (other than the Company or a Wholly Owned Restricted Subsidiary of the Company) to own any Preferred Stock of any Domestic Restricted Subsidiary of the Company that is not a Guarantor.

Section 4.11. *Asset Sales.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, consummate an Asset Sale unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration therefor at the time of such Asset Sale at least equal to the fair market value at the time of such Asset Sale of the property, assets or stock sold or otherwise disposed of (as determined in good faith by the Company's Board of Directors);

(2) at least 75% of the consideration received by the Company or the Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of cash, Cash Equivalents and/or Replacement Assets (as defined) and is received at the time of such disposition; *provided* that, for purposes of this clause 2, (A) the amount of any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet) of the Company or any such Restricted Subsidiary (other than liabilities that are by their terms subordinated in right of payment to the Notes or any Guarantee of a Guarantor) that are assumed by the transferee of any such assets and (B) the fair market value of any securities or other assets received by the Company or any such Restricted Subsidiary in exchange for any such assets that are converted into cash or Cash Equivalents within 360 days after such Assets Sale, in each case shall be deemed to be cash for purposes of this provision; and

(3) Upon the consummation of an Asset Sale, the Company shall apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 360 days of receipt thereof either:

(A) to permanently reduce Indebtedness under a Bank Facility or to permanently repay any secured Indebtedness (other than Subordinated Indebtedness) of the Company or any Restricted Subsidiary or any Indebtedness of any Restricted Subsidiary that is not a Guarantor;

(B) to make an investment in properties and assets (including Capital Stock) that replace the properties and assets that were the subject of such Asset Sale or in properties and assets that will be used in the business of the Company and its Restricted Subsidiaries as existing on the Issue Date or in businesses reasonably related thereto ("*Replacement Assets*");

(C) to repay other pari passu Indebtedness;*provided* that the Company shall also equally and ratably reduce Indebtedness under the Notes by making an offer (in accordance with the procedures set forth below for a Net Proceeds Offer) to all Holders to purchase the *pro rata* principal amount of Notes, in each case at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest to the repurchase date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); and/or

(D) a combination of prepayment and investment permitted by the foregoing clauses (A) - (C);

provided that in the case of an investment in Replacement Assets pursuant to clause (B) or (D) above, a binding commitment shall be treated as a permitted application of the Net Cash Proceeds from the date of such commitment and, in the event such binding commitment is later cancelled or terminated for any reason before such Net Cash Proceeds are so applied, the Company or such Restricted Subsidiary enters into another binding commitment within 180 days of such cancellation or termination of the prior binding commitment.

(b) Pending the final application of such Net Cash Proceeds, the Company may temporarily reduce borrowings under the Bank Facility or any other revolving credit facility or otherwise invest the Net Cash Proceeds in any manner not prohibited by this Indenture. On the 361st day after an Asset Sale or such earlier date, if any, as the Board of Directors of the Company or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in clauses 3(A)-(D) of Section 4.11(a) (each, a "*Net Proceeds Offer Trigger Date*"), such aggregate amount of Net Cash Proceeds (rounded down to the nearest $1,000) that has not been applied on or before such Net Proceeds Offer Trigger Date as permitted in clauses 3(A)-(D) of the preceding paragraph or the last provision of this paragraph (each a "*Net Proceeds Offer Amount*") shall be applied by the Company or such Restricted Subsidiary to make an offer to purchase (the "*Net Proceeds Offer*") to all Holders and, to the extent required by the terms of any Pari Passu Indebtedness, to all holders of Pari Passu Indebtedness, on a date (the "*Net Proceeds Offer Payment Date*") not less than 30 nor more than 60 days following the applicable Net Proceeds Offer Trigger Date, from all Holders (and holders of any such Pari Passu Indebtedness) on a *pro rata* basis, the maximum amount of Notes and Pari Passu Indebtedness equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount of the Notes and Pari Passu Indebtedness to be purchased, plus accrued and unpaid interest thereon, if any, to the date of purchase; *provided* that if at any time any non-cash consideration received by the Company or any Restricted Subsidiary of the Company, as the case may be, in connection with any Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this Section 4.11.

(c) The Company may defer the Net Proceeds Offer until there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of $25.0 million resulting from one or more Asset Sales (at which time, the entire unutilized Net Proceeds Offer Amount, and not just the amount in excess of $25.0 million, shall be applied as required pursuant to this Section 4.11).

(d) In the event of the transfer of substantially all (but not all) of the property and assets of the Company and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under Section 5.01 which transaction does not constitute a Change of Control, the successor corporation shall be deemed to have sold the properties and assets of the Company and its Restricted Subsidiaries not so transferred for purposes of this Section 4.11, and shall comply with the provisions of this Section 4.11 with respect to such deemed sale as if it were an Asset Sale. In addition, the fair market value of such properties and assets of the Company or its Restricted Subsidiaries deemed to be sold shall be deemed to be Net Cash Proceeds for purposes of this Section 4.11.

(e) Each Net Proceeds Offer will be mailed to the record Holders as shown on the register of Holders within 25 days following the Net Proceeds Offer Trigger Date, with a copy to the Trustee, and

shall comply with the procedures set forth in this Indenture. Upon receiving notice of the Net Proceeds Offer, Holders may elect to tender their Notes in whole or in part (of $2,000 and integral multiples of $1,000 in excess thereof) in exchange for cash. To the extent Holders properly tender Notes and holders of Pari Passu Indebtedness properly tender such Pari Passu Indebtedness in an amount exceeding the Net Proceeds Offer Amount, the tendered Notes and Pari Passu Indebtedness will be purchased on a *pro rata* basis based on the aggregate amount of Notes and Pari Passu Indebtedness tendered (and the Trustee shall select the tendered Notes of tendering Holders on a *pro rata* basis based on the amount of Notes and Pari Passu Indebtedness tendered). A Net Proceeds Offer shall remain open for a period of 20 Business Days or such longer or shorter period as may be required or permitted, respectively, by law. If any Net Cash Proceeds remain after the consummation of any Net Proceeds Offer, the Company may use those Net Cash Proceeds for any purpose not otherwise prohibited by this Indenture. Upon completion of each Net Proceeds Offer, the amount of Net Cash Proceeds will be reset at zero.

(f) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.11, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.11 by virtue thereof.

Section 4.12. *Limitations on Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its Affiliates (each an "*Affiliate Transaction*"), having a value greater than $5.0 million other than (x) Affiliate Transactions permitted under Section 4.12(b) and (y) Affiliate Transactions on terms that are no less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company or such Restricted Subsidiary.

(b) All Affiliate Transactions (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of $25.0 million shall be approved by the Board of Directors of the Company or such Restricted Subsidiary, as the case may be, such approval to be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the foregoing provisions. If the Company or any Restricted Subsidiary of the Company enters into an Affiliate Transaction (or a series of related Affiliate Transactions related to a common plan) that involves an aggregate fair market value of more than $50.0 million, the Company or such Restricted Subsidiary, as the case may be, shall, prior to the consummation thereof, obtain a favorable opinion as to the fairness of such transaction or series of related transactions to the Company or the relevant Restricted Subsidiary, as the case may be, from a financial point of view, from an Independent Financial Advisor and file the same with the Trustee.

(c) The restrictions set forth in this Section 4.12 shall not apply to:

(1) loans, advances and payments of reasonable fees and compensation paid (whether in cash or the issuance of Capital Stock of the Company) to and indemnity provided on behalf of, officers, directors, employees or consultants of the Company or any Restricted Subsidiary of the Company in the ordinary course of business or as determined in good faith by the Company's Board of Directors or senior management;

(2) transactions exclusively between or among the Company and any of its Restricted Subsidiaries or exclusively between or among such Restricted Subsidiaries, *provided* that such transactions are not otherwise prohibited by this Indenture;

(3) any agreement as in effect as of the Issue Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement, taken as a whole, is not materially more disadvantageous to the Holders than the original agreement as in effect on the Issue Date;

(4) any transaction on arm's-length terms with any non-Affiliate that becomes an Affiliate as a result of such transaction;

(5) any employment, consulting and severance arrangements entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(6) the issuance and sale of Qualified Capital Stock;

(7) Permitted Investments and Restricted Payments permitted by this Indenture; and

(8) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers and employees of the Company and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Company and the Restricted Subsidiaries.

Section 4.13. *Limitation on Liens.*

The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or permit or suffer to exist any Liens of any kind against or upon any property or assets of the Company or any of its Restricted Subsidiaries whether owned on the Issue Date or acquired after the Issue Date, or any proceeds therefrom, or assign or otherwise convey any right to receive income or profits therefrom unless:

(a) in the case of Liens securing Subordinated Indebtedness, the Notes or any Guarantee, as the case may be, are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; and

(b) in all other cases, the Notes or any Guarantee, as the case may be, are equally and ratably secured,

except for:

(1) Liens securing borrowings under a Bank Facility incurred pursuant to clause 2 of the definition of "Permitted Indebtedness";

(2) Liens existing as of the Issue Date to the extent and in the manner such Liens are in effect on the Issue Date;

(3) Liens securing the Company's and its Restricted Subsidiaries' Obligations under any hedge facility permitted under this Indenture to be entered into by the Company and its Restricted Subsidiaries;

(4) Liens securing the Notes and any Guarantees;

(5) Liens in favor of the Company or a Wholly Owned Restricted Subsidiary of the Company on assets of any Restricted Subsidiary of the Company;

(6) Liens securing Refinancing Indebtedness which is incurred to Refinance any Indebtedness which has been secured by a Lien permitted under this Indenture and which has been incurred in accordance with the provisions of this Indenture; *provided* that such Liens: (i) are no less favorable to the Holders in any material respect and are not more favorable to the lienholders in any material respect with respect to such Liens than the Liens in respect of the Indebtedness being Refinanced as determined by the Board of Directors of the Company in its reasonable and good faith judgment; and (ii) do not extend to or cover any property or assets of the Company or any of its Restricted Subsidiaries not securing the Indebtedness so Refinanced; and

(7) Permitted Liens.

Section 4.14. *Conduct of Business.*

The Company and its Restricted Subsidiaries will not engage in any businesses that are not the same, similar, ancillary, complementary or reasonably related to the businesses in which the Company and its Restricted Subsidiaries are engaged on the Issue Date.

Section 4.15. *Offer to Repurchase Upon Change of Control.*

(a) Upon the occurrence of a Change of Control, unless the Company or a third party has previously or concurrently mailed a redemption notice with respect to all outstanding Notes as described under Section 3.03 or 3.09, the Company will be required to make an offer to purchase each Holder's Notes pursuant to the offer described below (the "*Change of Control Offer*"), at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.

(b) Within 30 days following the date upon which the Change of Control occurred, the Company must send, or cause the Trustee to send, by first class mail, a notice to each Holder, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer. Such notice shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days after the date such notice is mailed, other than as may be required by law (the "*Change of Control Payment Date*"). Holders electing to have a Note purchased pursuant to a Change of Control Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed and specifying the portion (equal to $2,000 and integral multiples of $1,000 in excess thereof) of such Holder's Notes that it agrees to sell to the Company pursuant to the Change of Control Offer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Change of Control Payment Date.

(c) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.15, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the provisions of this Section 4.15 by virtue of such conflict.

(d) On the date of such Change of Control Payment, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

(e) The Paying Agent will promptly deliver to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and deliver (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note will be in a minimum principal amount of $2,000 or an integral multiple of $1,000. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the date of such Change of Control Payment.

(f) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer. The Company (or a third party) may make a Change of Control Offer in advance of, and conditioned upon, any Change of Control.

Section 4.16. *Subsidiary Guarantees.*

If any existing or future Domestic Restricted Subsidiary shall, after the Issue Date, guarantee any Public Debt Securities, then the Company shall cause such Domestic Restricted Subsidiary to:

(1) execute and deliver to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Company's obligations under the Notes and this Indenture on the terms set forth in this Indenture; and

(2) deliver to the Trustee an officer's certificate and an opinion of counsel that such supplemental indenture has been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a legal, valid, binding and enforceable obligation of such Restricted Subsidiary.

Thereafter, such Domestic Restricted Subsidiary shall be a Guarantor for all purposes of this Indenture until such Domestic Restricted Subsidiary is released from its Guarantee as provided in this Indenture.

Section 4.17. *Payments for Consent.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or

the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Section 4.18. *Suspension of Covenants.*

(a) During any period of time that: (i) the Notes have Investment Grade Ratings from two Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "*Covenant Suspension Event*"), the Company and the Restricted Subsidiaries shall not be subject to the provisions of Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.16, 5.01(a)(2) (collectively, the "*Suspended Covenants*").

(b) Upon the occurrence of a Covenant Suspension Event, the Guarantees of the Guarantors, if any, will also be suspended as of such date (the "*Suspension Date*").

(c) In the event that the Company and the Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the foregoing, and on any subsequent date (the "*Reversion Date*") one or both of the Rating Agencies withdraws its Investment Grade Rating or downgrades the rating assigned to the notes below an Investment Grade Rating, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events and the Guarantees of the Guarantors will be reinstated if such guarantees are then required by the terms of this Indenture. The period of time between the Suspension Date and the Reversion Date is referred to in this Indenture as the "*Suspension Period.*"

(d) Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or upon termination of the Suspension Period or after that time based solely on events that occurred during the Suspension Period).

(e) On the Reversion Date, all Indebtedness incurred, or Disqualified Capital Stock or Preferred Stock issued, during the Suspension Period will be classified as having been incurred or issued pursuant to Section 4.09(a) or the definition of "Permitted Indebtedness" (to the extent such Indebtedness or Disqualified Capital Stock or Preferred Stock would be permitted to be incurred or issued thereunder as of the Reversion Date and after giving effect to Indebtedness incurred or issued prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness or Disqualified Capital Stock or Preferred Stock would not be so permitted to be incurred or issued pursuant to Section 4.09(a) or the definition of "Permitted Indebtedness", such Indebtedness or Disqualified Capital Stock or Preferred Stock will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (3) of the definition of "Permitted Indebtedness". Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 4.07 will be made as though under Section 4.07 had been in effect since the Issue Date and throughout the Suspension Period. For the avoidance of doubt, Restricted Payments made during the Suspension Period shall reduce the amount available to be made as Restricted Payments under Section 4.07(a). No Default or Event of Default shall be deemed to have occurred on the Reversion Date as a result of any actions taken by the Company or its Restricted Subsidiaries during the Suspension Period.

(f) The Company shall deliver promptly to the Trustee an Officers' Certificate notifying the Trustee of any Covenant Suspension Event or Reversion Date, as the case may be, pursuant to this Section 4.18, upon which the Trustee may conclusively rely. The Trustee shall have no duty to inquire or to verify the treatment of the Company's debt by the Rating Agencies or otherwise to determine the factual basis for the Company's determination of the occurrence or timing of a Covenant Suspension Event or Reversion Date. The Company also shall provide notice to the Holders of any Covenant Suspension Event or Reversion Date.

ARTICLE 5.

SUCCESSORS

Section 5.01. *Merger, Consolidation, or Sale of Assets.*

(a) The Company will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of (or cause or permit any Restricted Subsidiary of the Company to sell, assign, transfer, lease, convey or otherwise dispose of) all or substantially all of the Company's assets (determined on a consolidated basis for the Company and the Company's Restricted Subsidiaries) whether as an entirety or substantially as an entirety to any Person unless:

(1) either:

(A) the Company shall be the surviving or continuing corporation; or

(B) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company and of the Company's Restricted Subsidiaries substantially as an entirety (the "*Surviving Entity*"):

(i) shall be an entity organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; *provided* that in the case where the Surviving Entity is not a corporation, a co-obligor of the notes is a corporation; and

(ii) shall expressly assume, by supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, interest on all of the Notes and the performance of every covenant of the Notes and this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction and the assumption contemplated by clause (1)(B)(ii) of this Section 5.01(a) (including giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction), (A) the Company or such Surviving Entity, as the case may be, shall be able to incur at least $1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to Section 4.09(a) hereof or (B) the applicable Consolidated Fixed Charge Coverage Ratio of the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company) would be no less than the applicable Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to such transaction;

(3) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (1)(B)(ii) of this Section 5.01(a) (including, without limitation, giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing; and

(4) the Company or the Surviving Entity shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with the applicable provisions of this Indenture and that all conditions precedent in this Indenture relating to such transaction have been satisfied.

(b) For purposes of the provisions of Section 5.01(a) hereof, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Company, in a single or a series of related transactions, which properties and assets, if held by the Company instead of such Restricted Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

(c) Notwithstanding clauses (1), (2) and (3) of Section 5.01(a) hereof, but subject to the proviso in clause (1)(B)(i) of Section 5.01(a), the Company may merge with (x) any of its Wholly Owned Restricted Subsidiaries or (y) an Affiliate that is a Person that has no material assets or liabilities and which was organized solely for the purpose of reorganizing the Company in another jurisdiction.

(d) Each Guarantor (other than any Guarantor whose Guarantee is to be released in accordance with the terms of the Guarantee and this Indenture in connection with any transaction complying with the provisions of Section 4.11 hereof) will not, and the Company will not cause or permit any Guarantor to, consolidate with or merge with or into any Person other than the Company or any other Guarantor unless:

(1) the entity formed by or surviving any such consolidation or merger (if other than the Guarantor) or to which such sale, lease, conveyance or other disposition shall have been made is a corporation organized and existing under the laws of the United States or any State thereof or the District of Columbia;

(2) such entity assumes by supplemental indenture all of the obligations of the Guarantor on the Guarantee;

(3) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and

(4) immediately after giving effect to such transaction and the use of any net proceeds therefrom on a pro forma basis, the Company could satisfy the provisions of Section 5.01(a)(2) hereof.

(e) Any merger or consolidation of a Guarantor with and into the Company (with the Company being the surviving entity) or another Restricted Subsidiary of the Company that is a Guarantor need only comply with the provisions of Section 5.01(a)(4) hereof.

Section 5.02. *Successor Corporation Substituted.*

Upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Company in accordance with the provisions of Section 5.01 hereof in which the Company is not the continuing corporation, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such surviving entity had been named as such and all financial information and reports required by this Indenture shall be provided by and for such surviving entity.

ARTICLE 6.

DEFAULTS AND REMEDIES

Section 6.01. *Events of Default.*

Any of the following events shall constitute an event of default (an "*Event of Default*"):

(a) the failure to pay interest on any Notes when the same becomes due and payable and the default continues for a period of 30 days;

(b) the failure to pay the principal on any Notes, when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase Notes tendered pursuant to a Change of Control Offer or a Net Proceeds Offer) on the date specified for such payment in the applicable offer to purchase;

(c) a default in the observance or performance of any other covenant or agreement contained in this Indenture which default continues for a period of 60 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes (except (i) in the case of a default with respect to Section 5.01, which will constitute an Event of Default with such notice requirement but without such passage of time requirement and (ii) as otherwise provided in the last paragraph of Section 4.03);

(d) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the stated principal amount of any Indebtedness of the Company or any Restricted Subsidiary of the Company, or the acceleration of the final stated maturity of any such Indebtedness (which acceleration is not rescinded, annulled or otherwise cured within 20 days of receipt by the Company or such Restricted Subsidiary of notice of any such acceleration) if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final stated maturity or which has been so accelerated (in each case with respect to which the 20-day period described above has passed), equals $50.0 million or more at any time;

(e) one or more judgments in an aggregate amount in excess of $50.0 million shall have been rendered against the Company or any of its Restricted Subsidiaries and such judgments remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and non-appealable;

(f) the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary pursuant to or within the meaning of Bankruptcy Law:

(1) commences a voluntary case,

(2) consents to the entry of an order for relief against it in an involuntary case,

(3) consents to the appointment of a custodian for it or for all or substantially all of their property,

(4) makes a general assignment for the benefit of its creditors, or

(5) an admission by the Company in writing of its inability to pay its debts as they become due;

(g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(1) is for relief against the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary in an involuntary case;

(2) appoints a custodian of the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary;

(3) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary; and the order or decree remains unstayed and in effect for 60 consecutive days; or

(h) any Guarantee of a Guarantor that is a Material Subsidiary (or group of Guarantors that would constitute a Material Subsidiary) or any material provision thereof ceases to be in full force and effect or any Guarantee of a Guarantor is declared to be null and void and unenforceable or any Guarantee of a Guarantor is found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of this Indenture).

Section 6.02. *Acceleration.*

If an Event of Default (other than an Event of Default specified in clause (f) or (g) of Section 6.01 hereof with respect to the Company) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal of, and accrued and unpaid interest on all the Notes to be due and payable by notice in writing to the Company and the Trustee specifying the respective Event of Default and that it is a "notice of acceleration", and the same shall become immediately due and payable. Upon declaration of acceleration, the aggregate principal of, and accrued and unpaid interest on the outstanding Notes shall immediately become due and payable.

If an Event of Default specified in clause (f) or (g) of Section 6.01 hereof with respect to the Company occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding Notes shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

At any time after a declaration of acceleration with respect to the Notes as described in this Section 6.02 hereof, the Holders of a majority in principal amount of the Notes then outstanding by written notice to the Trustee may, on behalf of all of the Holders, rescind and cancel such acceleration or waive any existing Default or Event of Default (except a default in the payment of the principal of or interest on any Notes) and its consequences:

(a) if the rescission would not conflict with any judgment or decree;

(b) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;

(c) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal which has become due otherwise than by such declaration of acceleration, has been paid;

(d) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and

(e) in the event of the cure or waiver of an Event of Default of the type described in clause (f) or (g) of Section 6.01 hereof with respect to the Company, the Trustee shall have received an Officers' Certificate and an Opinion of Counsel, each stating that such Event of Default has been cured or waived.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

No Holder of any Note will have any right to institute any proceeding with respect to this Indenture or for any remedy hereunder, unless such Holder shall have previously given to the Trustee written notice of a continuing Event of Default and unless also the Holders of at least 25% in aggregate principal amount of the outstanding Notes shall have made written request, and offered reasonable indemnity, to the Trustee to institute such proceeding as Trustee, and the Trustee shall not have received from the Holders of a majority in aggregate principal amount the outstanding Notes a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. Such limitations do not apply, however, to a suit instituted by a Holder of Notes for enforcement of payment of principal of and accrued and unpaid interest on such Notes on or after the respective due dates expressed in such Notes.

Section 6.03. *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising

any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04. *Waiver of Past Defaults.*

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of the Holders of all Notes waive any existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, and interest on the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05. *Control by Majority.*

Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, (i) the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability, and (ii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. Notwithstanding any provision to the contrary in this Indenture, the Trustee is under no obligation to exercise any of its rights or powers under this Indenture at the direction or request of any Holder, unless such Holder shall offer to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

Section 6.06. *Limitation on Suits.*

A Holder of Notes may pursue any remedy with respect to this Indenture or Notes only if:

(a) such Holder gives to the Trustee written notice that an Event of Default is continuing or the Trustee receives such notice from the Company;

(b) Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offer and, if requested, provide to the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of such security or indemnity; and

(e) during such 60-day period, Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with such request.

A Holder may not use this Indenture to affect, disturb or prejudice the rights of another Holder or to obtain or seek to obtain a preference or priority over another Holder.

Section 6.07. *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(a) or (b) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as Trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09. *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other securities or property payable or deliverable upon the exchange of the Notes or on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. *Priorities.*

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money and property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all reasonable compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any and interest, respectively;

Third: without duplication, to the Holders for any other Obligations owing to the Holders under this Indenture and the Notes; and

Fourth: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11. *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7.

TRUSTEE

Section 7.01. *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, and subject to any direction received by the requisite Holders, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture or the TIA and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture.

However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02. *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company or a Guarantor shall be sufficient if signed by an Officer of the Company or such Guarantor.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable indemnity or security satisfactory to the Trustee against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be deemed to have notice of a Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office specified in Section 12.02 hereof.

Section 7.03. *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as Trustee (if this Indenture has been qualified under the TIA) or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10 and Section 7.11 hereof.

Section 7.04. *Trustee's Disclaimer.*

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05. *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will deliver to Holders a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06. *Reports by Trustee to Holders of the Notes.*

(a) Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee will deliver to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). For the year 2010, no report need be transmitted pursuant to this Section 7.06 if no event described in TIA § 313(a) has occurred since the date hereof. The Trustee also will comply with TIA § 313(b)(2). The Trustee will also transmit by mail all reports as required by TIA § 313(c).

(b) A copy of each report at the time of its mailing to the Holders will be mailed by the Trustee to the Company and filed by the Trustee with the Commission and each stock exchange on which the Notes are listed in accordance with TIA § 313(d). The Company will promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07. *Compensation and Indemnity.*

(a) The Company will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time.

The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company and the Guarantors, jointly and severally, shall indemnify the Trustee against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company (including this Section 7.07) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence, willful misconduct or bad faith. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of one such counsel (except as provided in the first sentence of this Section 7.07(b)). The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company under this Section 7.07 shall survive the satisfaction and discharge of this Indenture.

(d) To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee. Such Lien shall survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(f) or Section 6.01(g) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) The Trustee shall comply with the provisions of TIA § 313(b)(2) to the extent applicable.

Section 7.08. *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall deliver a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's and the Guarantors' obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee.

Section 7.09. *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.10. *Eligibility; Disqualification.*

(a) There will at all times be a Trustee hereunder that is a national banking association or other corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

(b) This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Section 7.11. *Preferential Collection of Claims Against the Company.*

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

ARTICLE 8.

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01. *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Company may, at its option and at any time, elect to have either Section 8.02 or Section 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02. *Legal Defeasance and Discharge.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (a) and (b) below, and to have satisfied all its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(a) the rights of Holders to receive payments in respect of the principal of, premium, if any, and interest on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(b) the Company's obligations with respect to the Notes under Article 2 and Sections 4.01 and 4.02 hereof;

(c) the rights, powers, trusts, duties and immunities of the Trustee and the Company's obligations in connection therewith; and

(d) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03. *Covenant Defeasance.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Sections 4.07 through Section 4.16 hereof and Section 4.03, Section 4.04, Section 4.05 and Section 5.01 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the outstanding Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the

outstanding Notes, the Company or any of its Subsidiaries may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Section 6.01(c), Section 6.01(d), Section 6.01(e) and 6.01(h) hereof will not constitute Events of Default.

Section 8.04. *Conditions to Legal or Covenant Defeasance.*

The following shall be the conditions to the applicability of either Section 8.02 or 8.03 hereof to the outstanding Notes:

(a) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities rated AAA or better by S&P and Aaa by Moody's, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(b) in the case of an election under Section 8.02 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that:

(1) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or

(2) since the date of this Indenture, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.03 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings);

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under this Indenture (other than a Default or Event of Default

resulting from the borrowing of funds to be applied to such deposits and the grant of any Lien securing such borrowings) or any other material agreement or instrument to which the Company or any of its Restricted Subsidiaries is a party or by which the Company or any of its Restricted Subsidiaries is bound;

(f) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others;

(g) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel (which opinion may be subject to customary assumptions and exclusions), each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(h) the Company shall have delivered to the Trustee an Opinion of Counsel, stating that assuming no intervening bankruptcy of the Company between the date of deposit and the 124th day following the date of deposit and that no Holder is an insider of the Company, after the 124th day following the date of deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally.

Notwithstanding the foregoing, the Opinion of Counsel required by clause (b) above with respect to a Legal Defeasance need not be delivered if all Notes not theretofore delivered to the Trustee for cancellation (x) have become due and payable or (y) will become due and payable on the maturity date or a redemption date within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

Section 8.05. *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company or any Subsidiary acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06. *Repayment to the Company.*

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter be permitted to look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07. *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or Section 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's and the Guarantors' obligations under this Indenture, the Notes and the Guarantees, as applicable, will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or Section 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or Section 8.03 hereof, as the case may be; *provided*, *however*, that, if the Company makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9.

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01. *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Guarantees without the consent of any Holder of Notes:

(a) cure any ambiguity, defect or inconsistency;

(b) provide for the assumption by a Surviving Person of the obligations of the Company under this Indenture;

(c) provide for uncertificated Notes in addition to or in place of certificated Notes; *provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code);

(d) add Guarantees with respect to the Notes or confirm and evidence the release, termination or discharge of any security or Guarantee when such release, termination or discharge is permitted by this Indenture;

(e) secure the Notes, add to the covenants of the Company for the benefit of the holders of the Notes or surrender any right or power conferred upon the Company;

(f) make any change that does not adversely affect the rights of any holder of the Notes;

(g) comply with any requirement of the Commission in connection with the qualification of this Indenture under the TIA;

(h) provide for the issuance of Additional Notes in accordance with this Indenture;

(i) evidence and provide for the acceptance of appointment by a successor Trustee;

(j) conform the text of this Indenture or the Notes to any provision of the "Description of Notes" of the Prospectus to the extent that such provision in the "Description of Notes" of the Prospectus was intended to be a recitation of a provision of this Indenture or the Notes; or

(k) make any amendment to the provisions of this Indenture relating to the transfer and legending of the Notes as permitted by this Indenture, including, without limitation to facilitate the issuance and administration of the Notes; *provided* that (i) compliance with this Indenture as so amended would not result in the Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer the Notes.

Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02. *With Consent of Holders of Notes.*

(a) Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture, the Notes or any Guarantees with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Section 6.04 and Section 6.07 hereof, any existing Default or Event of Default, other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes (except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or any Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes). Section 2.08 hereof shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

(b) Upon the request of the Company accompanied by a Board Resolution authorizing the execution of any such amended or supplemental Indenture, Notes or Guarantees and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of such amended or supplemental Indenture, Notes or Guarantees unless such amended or supplemental Indenture, Notes or Guarantees directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture, Notes or Guarantees.

(c) It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

(d) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will deliver or cause to be delivered to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to deliver such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Section 6.04 and Section 6.07 hereof, compliance by the Company or the Guarantors in a particular instance with any provision of this Indenture, the Notes or any Guarantees may be waived by Holders of at least a majority in aggregate principal amount of the outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class. However, without the consent of each Holder affected thereby, an amendment, supplement or waiver under this Section 9.02 may not:

(1) reduce the amount of Notes whose Holders must consent to an amendment;

(2) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any Notes;

(3) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes, or change the date on which any Notes may be subject to redemption or reduce the redemption price therefor, other than prior to the Company's obligation to purchase Notes under provisions relating to the Company's obligation to make and consummate a Change of Control Offer in the event of a Change of Control or to make and consummate a Net Proceeds Offer with respect to any Asset Sale;

(4) make any Notes payable in money other than that stated in the Notes;

(5) make any change in provisions of this Indenture protecting the right of each Holder to receive payment of principal of and interest on such Note on or after the due date thereof or to bring suit to enforce such payment (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration), or permitting Holders of a majority in principal amount of Notes to waive Defaults or Events of Default;

(6) after the Company's obligation to purchase Notes arises thereunder, amend, change or modify in any material respect the obligation of the Company to make and consummate a Change of Control Offer in the event of a Change of Control or make and consummate a Net Proceeds Offer with respect to any Asset Sale that has been consummated or, after such Change of Control has occurred or such Asset Sale has been consummated, modify any of the provisions or definitions with respect thereto;

(7) modify or change any provision of this Indenture or the related definitions affecting the ranking of the Notes or any Guarantee in a manner which adversely affects the Holders;

(8) release any Guarantor that is a Material Subsidiary from any of its obligations under its Guarantee or this Indenture otherwise than in accordance with the terms of this Indenture; or

(9) modify or change the amendment provisions of the Notes or this Indenture.

Section 9.03. *Compliance with Trust Indenture Act.*

Every amendment or supplement to this Indenture or the Notes will be set forth in a amended or supplemental indenture that complies with the TIA as then in effect.

Section 9.04. *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05. *Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06. *Trustee to Sign Amendments, Etc.*

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company and the Guarantors may not sign an amended or supplemental indenture until their respective Boards of Directors approve it. In executing any amended or supplemental indenture, Notes or Guarantees, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture, Notes or Guarantee is authorized or permitted by this Indenture.

ARTICLE 10.

SATISFACTION AND DISCHARGE

Section 10.01. *Satisfaction and Discharge.*

This Indenture will be discharged and will cease to be of further effect (except as to surviving rights or registration of transfer or exchange of the Notes, as expressly provided for in this Indenture) as to all outstanding Notes issued hereunder, when:

(a) either:

(1) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation; or

(2) all Notes not theretofore delivered to the Trustee for cancellation (A) have become due and payable or (B) will become due and payable within one year, or are to be called for redemption within one year, under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal of, premium, if any, and interest on the Notes to the date of maturity or redemption, as the case may be, together with irrevocable instructions from the Company directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(b) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(c) the Company has delivered an Officers' Certificate and an Opinion of Counsel to the Trustee (which opinion may be subject to customary assumptions and exclusions), each stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (2) of clause (a) of this Section 10.01, the provisions of Section 10.02 and Section 8.06 hereof will survive. In addition, nothing in this Section 10.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 10.02. *Application of Trust Money.*

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the

Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 10.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on any such Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 11.

GUARANTEES

Section 11.01. *Guarantees*.

(a) Each Guarantor shall jointly and severally, fully, unconditionally and irrevocably guarantee the Notes and obligations of the Company hereunder and thereunder, and guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee on behalf of such Holder, that: (i) the principal of and premium, if any, and interest on the Notes shall be paid in full when due, whether at Stated Maturity, by acceleration, call for redemption or otherwise (including, without limitation, the amount that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code), together with interest on the overdue principal, if any, and interest on any overdue interest to the extent lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder shall be paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same shall be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise. Each of the Guarantees shall be a guarantee of payment and not of collection.

(b) Each Guarantor shall agree that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(c) Each Guarantor shall waive the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company or any other Person, protest, notice and all demands whatsoever and covenants that the Guarantee of such Guarantor shall not be discharged as to any Note except by complete performance of the obligations contained in such Note and such Guarantee or as provided for in this Indenture. Each of the Guarantors shall agree that, in the event of a default in payment of principal or premium, if any or interest on such Note, whether at its Stated Maturity, by acceleration, call for redemption, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Note, subject to the terms and conditions set forth in this Indenture, directly against each of the Guarantors to enforce such Guarantor's Guarantee without first proceeding against the Company or any other Guarantor. Each Guarantor agrees that if, after the occurrence and during the continuance of an

Event of Default, the Trustee or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the maturity of the Notes, to collect interest on the Notes, or to enforce or exercise any other right or remedy with respect to the Notes, such Guarantor shall pay to the Trustee for the account of the Holders, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee or any of the Holders.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Company or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or any Guarantor, any amount paid by any of them to the Trustee or such Holder, the Guarantee of each of the Guarantors, to the extent theretofore discharged, shall be reinstated in full force and effect. This Section 11.01(d) shall remain effective notwithstanding any contrary action which may be taken by the Trustee or any Holder in reliance upon such amount required to be returned. This Section 11.01(d) shall survive the termination of this Indenture.

(e) Each Guarantor further agrees that, as between each Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of the Guarantee of such Guarantor, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of the Guarantee of such Guarantor.

Section 11.02. *Execution and Delivery of Guarantee*.

To evidence its Guarantee set forth in Section 11.01 hereof, each Guarantor agrees that a notation of such Guarantee substantially in the form attached hereto as Exhibit B shall be endorsed on each Note authenticated and delivered by the Trustee. Such notation of Guarantee shall be signed on behalf of such Guarantor by an officer of such Guarantor (or, if an officer is not available, by a board member or director) on behalf of such Guarantor by manual or facsimile signature. In case the officer, board member or director of such Guarantor who shall have signed such notation of Guarantee shall cease to be such officer, board member or director before the Note on which such Guarantee is endorsed shall have been authenticated and delivered by the Trustee, such Note nevertheless may be authenticated and delivered as though the Person who signed such notation of Guarantee had not ceased to be such officer, board member or director.

Each Guarantor agrees that its Guarantee set forth in Section 11.01 hereof shall remain in full force and effect and apply to all the Notes notwithstanding any failure to endorse on each Note a notation of such Guarantee. The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of the Guarantors.

Section 11.03. *Severability*.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.04. *Limitation on Guarantors' Liability.*

Each Guarantor and by its acceptance hereof each Holder confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of the Federal Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent

Transfer Act or any similar federal or state law or the provisions of its local law relating to fraudulent transfer or conveyance. To effectuate the foregoing intention, the Trustee, the Holders and Guarantors hereby irrevocably agree that the obligations of such Guarantor under its Guarantee shall be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee, result in the obligations of such Guarantor under its Guarantee constituting a fraudulent transfer or conveyance.

Section 11.05. *Guarantors May Consolidate, Etc., on Certain Terms.*

Except as otherwise provided in this Section 11.05, a Guarantor may not sell or otherwise dispose of all or substantially all of its assets, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor, unless:

(a) immediately after giving effect to such transactions, no Default or Event of Default exists; and

(b) either:

(1) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger assumes all the obligations of that Guarantor under this Indenture and its Guarantee pursuant to a supplemental indenture satisfactory to the Trustee; or

(2) the Net Cash Proceeds of any such sale or other disposition of a Guarantor are applied in accordance with the provisions of Section 4.11 hereof.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Guarantee and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. All the Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all such Guarantees had been issued at the date of the execution hereof.

Except as set forth in Article 4 and Article 5 hereof, and notwithstanding clauses (a) and (b) above, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

Section 11.06. *Releases Following Sale of Assets and Other Events.*

Any Guarantor shall be automatically and unconditionally released and relieved of any obligations under its Guarantee without any further action on the part of the Trustee or any Holder:

(a) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) a Restricted Subsidiary, if sale or other disposition is made in accordance with the provisions of Section 4.11 hereof;

(b) in connection with any sale of all of the Capital Stock of a Guarantor to a Person that is not (either before or after giving effect to such transaction) a Restricted Subsidiary, if the sale is made in accordance with the provisions of Section 4.11 hereof;

(c) in connection with any transaction following which the applicable Guarantor is no longer a Restricted Subsidiary immediately after giving effect to such transaction if such transaction is made in accordance with Section 4.11;

(d) upon the discharge or release of all guarantees of such Guarantor, and all pledges of property or assets of such Guarantor securing all other Indebtedness of the Company and the Restricted Subsidiaries, which resulted in the creation of such Guarantee pursuant to Section 4.16; or

(e) if the Company exercises its legal defeasance option or covenant defeasance option pursuant to Sections 8.02 or 8.03 hereof or if its obligations under this Indenture are discharged in accordance with the terms of this Indenture.

Upon delivery to the Trustee of an Officers' Certificate and an Opinion of Counsel (which may be subject to certain qualifications) to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Sections 4.11 and 4.16 hereof, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Guarantee.

Any Guarantor not released from its obligations under its Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 11.

Section 11.07. *Release of a Guarantor*.

Any Guarantor that is designated by the Board of Directors of the Company as an Unrestricted Subsidiary in accordance with the terms of this Indenture shall, at such time, be deemed automatically and unconditionally released and discharged of its obligations under its Guarantee without any further action on the part of the Trustee or any Holder. The Trustee shall deliver an appropriate instrument evidencing such release upon receipt of the Company's request for such release accompanied by an Officers' Certificate certifying as to the compliance with this Section 11.07.

Section 11.08. *Benefits Acknowledged*.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that its guarantee and waivers pursuant to its Guarantee are knowingly made in contemplation of such benefits.

ARTICLE 12.

MISCELLANEOUS

Section 12.01. *Trust Indenture Act Controls.*

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA §318(c), the imposed duties shall control.

Section 12.02. *Notices*.

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or by electronic transmission, first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company or any Guarantor:

Equinix, Inc.
301 Velocity Way, Fifth Floor
Foster City, CA 94404
Attention: Brandi Galvin Morandi
General Counsel and Secretary
Facsimile No.: (650) 513-7909
E-mail: bgalvin@equinix.com

With a copy to:

Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
Attention: Alan F. Denenberg
Facsimile No.: (650) 752-3604
E-mail: alan.denenberg@davispolk.com

If to the Trustee:

U.S. Bank National Association
Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Paula M. Oswald (Equinix 2010 Indenture)
Facsimile No.: (213) 615-6197
E-mail: paula.oswald@usbank.com

The Company, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile or email; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next Business Day delivery.

Any notice or communication to a Holder shall be delivered by electronic transmission, first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next Business Day delivery to its address shown on the register kept by the Registrar. Any notice or communication shall also be so delivered to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to deliver a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is delivered in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company delivers a notice or communication to Holders, it will deliver a copy to the Trustee and each Agent at the same time.

Section 12.03. *Communication by Holders of Notes with Other Holders of Notes*.

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the applicable Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 12.04. *Certificate and Opinion as to Conditions Precedent*.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.05. *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 4.04 hereof or TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and must include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officers' Certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 12.06. *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.07. *No Personal Liability of Directors, Officers, Employees and Stockholder Members.*

No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of the Company, as such, shall have any liability for any obligations of the Company under the Notes or under the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of any of the Guarantors, as such, shall have any liability for any obligations of the Guarantors under any Guarantees or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liabilities. The waiver and release are part of the consideration for the issuance of the Notes and any Guarantees.

Section 12.08. *Governing Law*.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE AND THE NOTES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 12.09. *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company, any Guarantor or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.10. *Successors*.

All agreements of the Company and the Guarantors in this Indenture and the Notes and the Guarantees, as applicable, shall bind their respective successors and assigns. All agreements of the Trustee in this Indenture will bind its successors.

Section 12.11. *Severability*.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.12. *Counterpart Originals*.

This Indenture may be executed in any number of counterparts, and by the different parties on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 12.13. *Table of Contents, Headings, etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]

Dated as of March 3, 2010

EQUINIX, INC.

By: /s/ Keith D. Taylor
Name: Keith D. Taylor
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Paula M. Oswald
Name: Paula M. Oswald
Title: Vice President

EXHIBIT A

8.125% Senior Notes due 2018

[Insert the Global Note Legend, if applicable, pursuant to the provisions of the Indenture]

[Face of Note]

CUSIP 29444U AJ5

8.125% Senior Notes due 2018

No. _____ $_____

Equinix, Inc.

promises to pay to Cede & Co. or registered assigns,

the principal sum of DOLLARS on March 1, 2018.

Interest Payment Dates: March 1 and September 1

Record Dates: February 15 and August 15

Dated: March 3, 2010

Equinix, Inc.

By: _____
Name:
Title:

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank National Association, Trustee, certifies
that this is one of the Notes referred to in the Indenture.

By: _____
Authorized Signatory

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST*. Equinix, Inc., a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 8.125% per annum from March 3, 2010 until maturity. The Company will pay interest semi-annually in arrears on March 1 and September 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided further* that the first Interest Payment Date shall be September 1, 2010. The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 2% per annum in excess of the rate then in effect to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed daily on the basis of a 360-day year of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the February 15 or August 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest at the office or agency of the Company maintained for such purpose within or without the City and State of New York, or, at the option of the Company, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *PAYING AGENT AND REGISTRAR*. Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in the capacity of Paying Agent or Registrar.

(4) *INDENTURE*. The Company issued the Notes under an Indenture, dated as of March 3, 2010 (the "*Indenture*"), by and between the Company and the Trustee. The terms of this Note include those stated in the Indenture and those made part of the Indenture by reference to the TIA. The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Company.

(5) *OPTIONAL REDEMPTION*.

(a) Other than as set forth below, the Notes are not redeemable prior to maturity.

(b) At any time prior to March 1, 2013, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of the Notes (calculated giving effect to any issuance of Additional Notes) outstanding under the Indenture, at a redemption price equal to 108.125% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date, with the net cash proceeds of one or more Equity Offerings; *provided* that:

(1) at least 65% of the aggregate principal amount of the Notes (calculated giving effect to any issuance of Additional Notes) issued under the Indenture remains outstanding immediately after the occurrence of such redemption (excluding notes held by the Company and its subsidiaries); and

(2) the redemption must occur within 90 days of the date of the closing of such Equity Offering.

(c) On or after March 1, 2014, the Company may redeem all or a part of the Notes, on any one or more occasions, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date, if redeemed during the twelve-month period beginning on March 1 of the years indicated below:

Year	Percentage
2014	104.0625%
2015	102.0313%
2016 and thereafter	100.0000%

(d) At any time prior to March 1, 2014, the Company may also redeem all or a part of the Notes at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption (the "*Redemption Date*"), subject to the rights of Holders of record of Notes on the relevant record date to receive interest due on the relevant interest payment date.

(e) Any redemption pursuant to this paragraph 5 shall be made pursuant to the provisions of Section 3.01 through Section 3.06 of the Indenture.

(6) *MANDATORY REDEMPTION.* The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *REPURCHASE AT THE OPTION OF HOLDER.*

(a) In the event that the Company or a Restricted Subsidiary is required to commence an offer to all Holders to purchase Notes pursuant to Section 4.11 or 4.15 of the Indenture, it will comply with the terms set forth in the Indenture, including Section 3.09.

(b) If a Change of Control occurs, the Company will be required to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of such Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of the Notes repurchased plus accrued and unpaid interest on the Notes repurchased to the date of repurchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Company will deliver a notice to each Holder, with a copy to the Trustee, setting forth the procedures governing the Change of Control Offer as required by the Indenture.

(8) *NOTICE OF REDEMPTION*. Notice of redemption will be delivered at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. On and after the redemption date, interest will cease to accrue on the Notes or portions thereof called for redemption as long as the Company has deposited with the Paying Agent funds in satisfaction of the applicable redemption price.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE.* The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not issue, register the transfer of or exchange any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the next succeeding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS.* The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture, the Notes or the Guarantees may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes (including Additional Notes, if any, issued under the Indenture) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for purchase of, the Notes), and any existing Default or Event or Default, other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes (except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of the Indenture, the Notes and the Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including Additional Notes, if any, issued under the Indenture) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for purchase of, the Notes). Without the consent of any Holder of Notes, the Indenture, the Notes or the Guarantees may be amended or supplemented to cure any ambiguity, defect or inconsistency; provide for the assumption by a Surviving Person of the obligations of the Company under the Indenture; provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code); add Guarantees with respect to the Notes or confirm and evidence the release, termination or discharge of any security or Guarantee when such release, termination or discharge is permitted by the Indenture; secure the Notes, add to the covenants of the Company for the benefit of the holders of the Notes or surrender any right or power conferred upon the Company; make any change that does not adversely affect the rights of any holder of the Notes; comply with any requirement of the Commission in connection with the qualification of the Indenture under the TIA; provide for the issuance of Additional Notes in accordance with the Indenture; evidence and provide for the acceptance of appointment by a successor Trustee; conform the text of the Indenture or the Notes to any provision of the "Description of Notes" of the Prospectus to the extent that such provision in the "Description of Notes" of the Prospectus was intended to be a recitation of a provision of the Indenture or the Notes; or make any amendment to the provisions of the Indenture relating to the transfer and legending

of the Notes as permitted by the Indenture, including, without limitation to facilitate the issuance and administration of the Notes; *provided* that (i) compliance with the Indenture as so amended would not result in the Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer the Notes.

(12) *DEFAULTS AND REMEDIES*. Events of Default with respect to the Notes include: (i) default for 30 days in the payment when due of interest on, with respect to the Notes; (ii) default in the payment when due (at maturity, upon redemption or otherwise) of the principal on the Notes (including the failure to make a payment to purchase Notes tendered pursuant to a Change of Control Offer or a Net Proceeds Offer); (iii) failure by the Company for 60 days after notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other covenants or agreements in the Indenture (except (i) in the case of a default with respect to Section 5.01 of the Indenture, which will constitute an Event of Default with such notice requirement but without such passage of time requirement and (ii) as otherwise provided in the last paragraph of Section 4.03 of the Indenture); (iv) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the stated principal amount of any Indebtedness of the Company or any Restricted Subsidiary of the Company, or the acceleration of the final stated maturity of any such Indebtedness (which acceleration is not rescinded, annulled or otherwise cured within 20 days of receipt by the Company or such Restricted Subsidiary of notice of any such acceleration) if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final stated maturity or which has been so accelerated (in each case with respect to which the 20-day period described above has passed), equals $50.0 million or more at any time; (v) failure by the Company to pay final non-appealable judgments entered by a court or courts of competent jurisdiction against the Company or any Restricted Subsidiary of the Company in amounts aggregating in excess of $50.0 million, which judgments are not paid, discharged or stayed for a period of 60 days; (vi) the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary, pursuant to or within the meaning of Bankruptcy Law, commences a voluntary case, consents to the entry of an order for relief against it in an involuntary case, consents to the appointment of a custodian for it or for all or substantially all of its property, makes a general assignment for the benefit of its creditors, or an admission by the Company in writing of its inability to pay its debts as they become due; (vii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary in an involuntary case; appoints a custodian of the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary or orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Material Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Material Subsidiary and the order or decree remains unstayed and in effect for 60 consecutive days; or (viii) any Guarantee of a Guarantor that is a Material Subsidiary (or group of Guarantors that would constitute a Material Subsidiary) or any material provision thereof ceases to be in full force and effect or any Guarantee of a Guarantor is declared to be null and void and unenforceable or any Guarantee of a Material Subsidiary is found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of the Indenture).

If any Event of Default with respect to outstanding Notes occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare the principal of, and accrued and unpaid interest on all the Notes to be due and payable by notice in writing to the Company and the Trustee specifying the respective Event of Default and that it is a "notice of acceleration" and the same shall be immediately due and payable.

Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all unpaid principal of and accrued and unpaid interest on all of the outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest or premium, if any) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, within five Business Days of any Officer becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH THE COMPANY*. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee.

(14) *NO RECOURSE AGAINST OTHERS*. No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of the Company, as such, shall have any liability for any obligations of the Company under the Notes or under the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of any of the Guarantors, as such, shall have any liability for any obligations of the Guarantors under any Guarantees or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liabilities. The waiver and release are part of the consideration for the issuance of the Notes and any Guarantees.

(15) *AUTHENTICATION*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *CUSIP NUMBERS*. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes, and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW*. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE AND THIS NOTE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Equinix, Inc.
301 Velocity Way, Fifth Floor
Foster City, CA 94404
Attention: Chief Financial Officer

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

_____
(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____
(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date:

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

*PARTICIPANT IN A RECOGNIZED SIGNATURE GUARANTEE MEDALLION PROGRAM
(OR OTHER SIGNATURE GUARANTOR ACCEPTABLE TO THE TRUSTEE).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.11 (Asset Sale Offer) or Section 4.15 (Change of Control Offer) of the Indenture, check the appropriate box below:

☐ Section 4.11 ☐ Section 4.15

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.11 or Section 4.15 of the Indenture, state the amount you elect to have purchased:

$ _____

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)
Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF NOTATIONAL GUARANTEE

The Guarantor listed below (hereinafter referred to as the "*Guarantor*," which term includes any successors or assigns under that certain Indenture, dated as of March 3, 2010, by and between Equinix, Inc. (the "*Company*") and the Trustee (as amended and supplemented from time to time, the "*Indenture*"), has guaranteed the Company's 8.125% Senior Notes due 2018 (the "*Notes*") and the obligations of the Company under the Indenture, which include (i) the due and punctual payment of the principal of, premium, if any, and interest on the Notes, whether at stated maturity, by acceleration or otherwise, the due and punctual payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms set forth in Article 11 of the Indenture, (ii) in case of any extension of time of payment or renewal of any Notes or any such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise, and (iii) the payment of any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Holder in enforcing any rights under this Guarantee or the Indenture.

The obligations of each Guarantor to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article 11 of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

No stockholder, employee, officer, director or incorporator, as such, past, present or future of each Guarantor shall have any liability under this Guarantee by reason of his or its status as such stockholder, employee, officer, director or incorporator.

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon each Guarantor and its successors and assigns until full and final payment of all of the Company's obligations under the Notes and Indenture or until released in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and not of collection.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual or facsimile signature of one of its authorized officers. The Obligations of each Guarantor under its Guarantee shall be limited to the extent necessary to ensure that it does not constitute a fraudulent conveyance under applicable law.

THE TERMS OF ARTICLE 11 OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

Dated as of _____

[Guarantor]

By: _____
Name:
Title:

EQUINIX 2010 INCENTIVE PLAN
JANUARY 1, 2010

PLAN OBJECTIVES

Equinix, Inc. (the "Company") offers the 2010 Incentive Plan to eligible employees of the Company and its subsidiaries to provide them with the opportunity to participate in Company performance. It is designed to motivate employees to achieve certain Company objectives while providing competitive total rewards for key positions and retaining top talent.

PLAN FEATURES

ELIGIBILITY/PARTICIPATION

All full-time and part-time employees of the Company and employees of the Company's subsidiaries have the possibility of receiving a target bonus under the 2010 Incentive Plan, provided the conditions set out below are met. Commissioned sales employees are not eligible to participate. Full-time and part-time new hires become eligible to participate in the 2010 Incentive Plan as of their hire date. The maximum target bonus that an employee not employed by the Company or a participating subsidiary at the beginning of the year may receive, however, will be a percentage of a target bonus equal to that percentage of the year he/she was employed by the Company or a participating subsidiary and is subject to the conditions set out below being met. An employee with a start date on or after October 1st will not be eligible to participate in the 2010 Incentive Plan.

To be eligible to receive a target bonus, the employee must be employed by the company or a participating subsidiary at the date when the bonus amount is determined pursuant to the paragraph entitled "Payment of Awards" below, and for avoidance of doubt, an employee is not eligible to receive a bonus under the 2010 Incentive Plan if on the date a target bonus is to be paid:

- he/she is on a Performance Improvement Plan (PIP);
- he/she is on notice (whether given or received) termination of employment;
- he/she is on garden or similar non-paid leave; and
- he/she is suspended from his/her duties for any reason and/or is subject to ongoing disciplinary proceedings.

Payouts will be pro-rated over the period based on the position the employee held during the performance period. For example, if an employee is promoted from Senior Manager to Director, his/her bonus will be calculated based upon the number of days in each position. As another example, if an employee is promoted from a non-commissioned position to a commissioned sales position, his/her bonus will be pro-rated based on the number of days worked in a non-commissioned position. Subject to applicable laws, an employee on an approved leave of absence (not considered as effective work time) from the Company or a participating subsidiary will be eligible for the pro-rated bonus amount based on the number of days worked as an active employee during the 2010 calendar year.

Any bonus payment made under the 2010 Incentive Plan will not form part of an employee's pensionable salary.

The plan year is effective January 1, 2010 and will end on December 31, 2010. Where bonuses are awarded under the 2010 Incentive Plan, they will be paid after plan year-end.

TARGET BONUSES

Target bonuses are based on a percentage of the employee's annual base salary. An employee's target bonus percentage may be modified from time to time, for example, due to changes in the Company's financials or salary changes, until the end of the plan year.

The 2010 Incentive Plan includes an individual performance component. Bonus awards are linked to employee performance and are intended to reward achievement of key results at both the Company and individual level. Employee performance will be measured by an annual performance review. If the Company exceeds the approved operating plan for EBITDA, then top performers may earn up to 150% of target bonus awards. Employees may receive less than their targeted bonus based upon Company and individual performance. The degree to which the employee achieves his/her targeted bonus amount (e.g., less than, equal to, or greater than the target percentage) is the degree to which both the employee and the Company achieve key performance goals throughout the year.

In addition, at its discretion the Compensation Committee of the Board of Directors (the "Compensation Committee") may reduce or eliminate the actual award that otherwise would be payable should economic conditions warrant it.

PAYMENT OF AWARDS

Individual awards are determined once the plan year has ended and the Compensation Committee has decided any amounts to be awarded. Where individual awards are to be paid, they will be paid as soon after the close of the calendar year as practical. It is intended that payment will be made no event later than required to ensure that no amount paid or to be paid hereunder shall be subject to the provisions of Section 409A(a)(1)(B) of the Internal Revenue Code.

FORM OF PAYMENT

Each award shall be paid in cash in a single lump sum. The Company shall withhold all required taxes and charges from an award, including any federal, state, local or other taxes and social insurance contributions. Amounts will be determined by the Company in U.S. dollars, but may be paid to employees outside the United States in local currency.

PLAN ADMINISTRATION

The Plan is discretionary in nature, and the Compensation Committee may suspend, modify or terminate the 2010 Incentive Plan at any time without advance notice. The CEO of the Company will have the final decision over any interpretations or disputes regarding the 2010 Incentive Plan.

All determinations and decisions made by the Compensation Committee, the Board of Directors, or the CEO pursuant to the provisions of the 2010 Incentive Plan shall be final, conclusive and binding on all persons and shall be given the maximum deference permitted by law.

COMPANY PERFORMANCE AND FUNDING OF INCENTIVE POOL

The funding level of the Incentive Pool will be based on Company performance against an EBITDA goal, as set forth in the Board of Directors-approved operating plan, adjusted from time to time throughout the plan year. The EBITDA goal will exclude the impact of one-time events affecting the operating plan, such as expansion projects or acquisitions not contemplated in the operating plan and will exclude the impact of fluctuations in foreign currencies against the foreign currency rates applied in the FY2010 budget. The specific EBITDA goal for 2010 shall be as set forth on a "Design Criteria" established prior to the end of the first quarter.

The Design Criteria shall be as follows:

One hundred percent (100%) of the Incentive Pool shall be funded if the Company hits its operating plan for EBITDA for 2010, subject to the discretion retained by the Compensation Committee to reduce or eliminate the actual award that otherwise would be payable based upon achieving this goal. For every 1% below operating plan for EBITDA, the Incentive Pool shall be reduced by 20%. For instance, if the Company is 2% below operating plan, only 60% of the Incentive Pool shall be funded. There shall be no Incentive Pool if EBITDA is 95% or less of the approved operating plan.

MISCELLANEOUS

Nothing in the 2010 Incentive Plan shall interfere with or limit in any way the right of the Company or its subsidiary or affiliate, as applicable, to terminate any employee's employment or service at any time, with or without cause. Except to the extent provided by applicable law or pursuant to a written agreement between the employee and the Company or its subsidiary or affiliate, employment with the Company or its subsidiary or affiliates is on an at-will basis only. Nothing in this 2010 Incentive Plan shall constitute an employment agreement between an employee and the Company.

Each award that may become payable under the 2010 Incentive Plan shall be paid solely from the general assets of the Company. No amounts awarded or accrued under the Plan shall be funded, set aside, subject to interest payment or otherwise segregated prior to payment. The obligation to pay awards under the 2010 Incentive Plan shall at all times be an unfunded and unsecured obligation of the Company. Employees shall have the status of general creditors of the Company. Any bonus or award payable under the 2010 Incentive Plan is voluntary and occasional and does not create any contractual or other right to receive grants in future years or benefits in lieu of such awards.

The 2010 Incentive Plan and all awards shall be construed in accordance with and governed by the laws of the State of California, without regard to their conflict-of-law provisions.

Exhibit 10.42

February 9, 2010

Eric Schwartz

Dear Eric:

This letter is an addendum to the international assignment letter you executed with Equinix Operating Co., Inc. (the "Company") dated April 15, 2008, as amended on December 19, 2008 ("Assignment Letter"). The Company hereby agrees to extend your international assignment to August 1, 2012. Please note that you and your family will not receive another familiarization visit, temporary living assistance, moving costs – household good assistance (except the Company will continue to pay for any temporary warehousing of your furnishings), settlement allowance, or driver training as discussed in the Assignment Letter, as these benefits were one time benefits offered only during your and your family's initial move to the United Kingdom.

All other terms and conditions of the Assignment Letter will remain in effect through August 1, 2012.

Please signify your acceptance of the extension of your international assignment under these terms and conditions by signing the duplicate enclosed copy of this letter and returning to me by February 19, 2010.

Yours sincerely,

/s/ Steve Smith

Equinix Operating Co., Inc.
Steve Smith
CEO & President

Enclosure

Accepted and Agreed

/s/ Eric Schwartz	17-Feb-2010
Eric Schwartz	Date

Exhibit 10.43

FACILITY AGREEMENT

dated March 10, 2010

among

EQUINIX AUSTRALIA PTY LTD.
EQUINIX HONG KONG LIMITED
EQUINIX SINGAPORE PTE. LTD.
EQUINIX PACIFIC PTE. LTD.
EQUINIX JAPAN K.K.

as Borrowers

DBS BANK LTD.
ING BANK N.V., SINGAPORE BRANCH
THE ROYAL BANK OF SCOTLAND N.V.
GE COMMERCIAL FINANCE (HONG KONG) LTD.
as Joint Mandated Lead Arrangers and as Joint Mandated Bookrunners

THE ORIGINAL LENDERS AS SPECIFIED HEREIN

and

THE ROYAL BANK OF SCOTLAND N.V.
as Facility Agent

9/F, Central Tower
28 Queen's Road Central
Hong Kong

CONTENTS

THIS AGREEMENT is dated March 10, 2010 and made between:

(1) EQUINIX AUSTRALIA PTY LTD., an Australian corporation ("**Equinix Australia**"), EQUINIX HONG KONG LIMITED a Hong Kong company ("**Equinix HK**"), EQUINIX SINGAPORE PTE. LTD., a Singapore company (**"Equinix Singapore"),** EQUINIX PACIFIC PTE. LTD., a Singapore company ("**Equinix Pacific**"), and EQUINIX JAPAN K.K., a Japanese corporation **("Equinix Japan"**, together with Equinix Australia, Equinix Hong Kong, Equinix Singapore and Equinix Pacific, each individually, a "**Borrower**" and collectively, the "**Borrowers**"),

(2) DBS BANK LTD. as Joint Mandated Lead Arranger and Joint Mandated Bookrunner ("**DBS**"),

(3) ING BANK N.V., SINGAPORE BRANCH as Joint Mandated Lead Arranger and Joint Mandated Bookrunner ("**ING**"),

(4) THE ROYAL BANK OF SCOTLAND N.V. as Joint Mandated Lead Arranger and Joint Mandated Bookrunner ("**RBS**"),

(5) GE COMMERCIAL FINANCE (HONG KONG) LTD. as Joint Mandated Lead Arranger and Joint Mandated Bookrunner ("**GE**"), (together with DBS, ING and RBS, the "**JMLAs**"),

(6) THE FINANCIAL INSTITUTIONS listed in Schedule 1 (*List of Australian Dollar Lenders*), Schedule 2 (*List of HK Dollar Lenders*), Schedule 3 (*List of Singapore Dollar Lenders*) and Schedule 4 (*List of Yen Lenders*) as lenders ("**Original Lenders**"), and

(7) THE ROYAL BANK OF SCOTLAND N.V. as Facility Agent.

IT IS AGREED as follows:

SECTION 1
INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Accession Letter**" means a document substantially in the form set out in Schedule 2 (*Form of Obligor Accession Letter*) to the Intercreditor Agreement.

"**Administrative Borrower**" means Equinix Singapore.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Agreed Conversion and Aggregation Method**" means the method of aggregating the financial results of the Primary Obligors for the purposes of preparing the financial statements pursuant to Clause 19.1(d) (*Financial Statements*).

"**Agreed Security Principles**" means the principles set out in Schedule 21 (*Agreed Security Principles*).

"**Annualized Leverage Ratio**" means, at any date of determination, the ratio of (a) the aggregate of Consolidated Indebtedness of the Primary Obligors on such date calculated in accordance with the Agreed Conversion and Aggregation Method to (b) the sum of the Consolidated EBITDA of the Primary Obligors calculated in accordance with the Agreed Conversion and Aggregation Method for the six-month period ending on such date multiplied by two (2).

"**Applicable Benchmark Rate**" means BBSY, HIBOR, SOR or TIBOR, as the case may be, on the relevant Quotation Day.

"**Applicable Margin**" means the applicable percentage per annum as determined in accordance with Clause 9.1 (*Calculation of Applicable Margin*).

"Approved Currency" means, with respect to (i) the Australian Dollar Borrower, Australian Dollars (ii) the HK Dollar Borrower, HK Dollars, (iii) the Singapore Dollar Borrowers, Singapore Dollars and (iv) the Yen Borrower, Yen.

"Approved Currency Equivalent" means at any time as to any amount denominated in US Dollars, the equivalent amount in an Approved Currency calculated by the Facility Agent at such time using the Exchange Rate in effect on the Business Day (in the jurisdiction relevant to the Approved Currency) of determination.

"Asia-Pacific Group" means the Guarantor, its Subsidiaries in an Asia-Pacific Jurisdiction from time to time, and any Holding Company of a Primary Obligor.

"**Asia-Pacific Group Structure Chart**" means the group structure chart of the Asia-Pacific Group set out in Schedule 17 (*Asia-Pacific Group Structure Chart*).

"**Asia-Pacific Jurisdiction**" means any of Australia, Brunei, Cambodia, Hong Kong, India, Indonesia, Japan, Macau, Malaysia, Mongolia, New Zealand, People's Republic of China, Philippines, Singapore, South Korea, Taiwan, Thailand or Vietnam.

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 9 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

"**Australian Dollars**" or "**AUD**" means the lawful currency of Australia.

"**Australian Dollar Borrower**" means, in its capacity as the borrower of Australian Dollar Loans, Equinix Australia.

"**Australian Dollar Lender**" means each financial institution listed on Schedule 1 (*List of Australian Dollar Lenders*) (as amended from time to time), as well as any financial institution that has become an "Australian Dollar Lender" hereto, by the execution of an assignment or transfer to an Eligible Assignee in accordance with Clause 23 (*Changes to the Lenders*), other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an assignment or transfer. For the purposes of this Agreement, "Lender" includes each Australian Dollar Lender unless the context otherwise requires.

"**Australian Dollar Loans**" means the Tranche A Loans or Tranche B Loans made by the Australian Dollar Lenders to the Australian Dollar Borrower pursuant to the terms hereof.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means:

(a) in relation to the Tranche A Facility, the period commencing on the Signing Date and ending on the later to occur of (i) three (3) months after the Signing Date and (ii) thirty (30) days after the Syndication Closing Date; provided that such period shall end no later than 5 July 2010; and

(b) in relation to the Tranche B Facility, the period commencing on the Signing Date and ending twenty four (24) Months following the Signing Date.

"**Available Commitment**" means with respect to each Lender, in relation to any Approved Currency under a Facility, the Commitment of such Lender under such Approved Currency, if any, under such Facility minus:

(a) the Lender's proportion of outstanding Loans under such Facility denominated in such Approved Currency; and

(b) in relation to any proposed Utilisation, such Lender's proportion of any Loans that are denominated in such Approved Currency under such Facility that are due to be made on or before the proposed Utilisation Date.

"**Available Facility**" means, with respect to an Approved Currency under a Facility, the aggregate for the time being of each Lender's Available Commitment under such Approved Currency and Facility.

"**BBSY**" means, with respect to any Australian Dollar Loan for any Interest Period, the rate per annum for deposits in Australian Dollars for a period equal to or that most closely approximates the duration of such Interest Period which appears on Reuters screen BBSY (or such other page(s) as may replace that page as determined by the Facility Agent in consultation with the Administrative Borrower) as of 10:15 a.m., Sydney time on the relevant Quotation Day; provided that if such rate does not appear on that page, "BBSY" shall mean the rate expressed as a percentage to be the arithmetic mean (rounded upwards, if necessary, to the nearest four decimal places) as supplied to the Facility Agent at its request quoted by at least two Reference Banks that are leading banks as the rate at which it is offered deposits in Australian Dollars and for the required period in the Australian interbank market at or about 11:00 a.m., Sydney time.

"**Break Costs"** means the amount (if any) by which:

(a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"**Business Acquisition**" by a Primary Obligor means:

(a) the acquisition of (i) a company or (ii) any shares or securities in a company, following which such company is a Subsidiary of such Primary Obligor;

(b) the acquisition of a business or undertaking as a going concern (which does not constitute Capital Expenditure); or

(c) the establishment or incorporation of a company which undertakes an acquisition described under sub-paragraphs (a) or (b) above.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks in Sydney, Hong Kong, Singapore or Tokyo are authorized or required by law to close, except that in relation to any day on which a payment is to be made under the Finance Documents by a Primary Obligor, "Business Day" shall mean a day other than a Saturday, Sunday or other day on which banks in the place where payment is to be made are authorized or required by law to close.

"**Business Plan**" means the business plan of the Primary Obligors (including details as to the proposed Capital Expenditure to be financed with the proceeds of the Tranche B Facility) in the form agreed between the JMLAs and the Administrative Borrower and delivered pursuant to Clause 4.1 (*Initial Conditions Precedent*).

"**Capital Expenditure**" means any expenditure or obligation (other than expenditure or obligations which are Business Acquisitions) in respect of expenditure which, in accordance with GAAP, is treated as capital expenditure.

"**Casualty Event**" means, with respect to a Primary Obligor, any involuntary loss of, damage to or destruction of, or any condemnation or other taking by any person of, an Internet Business Exchange of such Primary Obligor where such damage, destruction, condemnation or taking results, individually or in aggregate with any other such event affecting such Primary Obligor, in a loss of twenty per cent. (20%) or more of the Net Fixed Assets in any financial year of such Primary Obligor at the time of such event (provided that any proceeds received in respect of any such event, and applied to replace or repair the affected assets or property in accordance with Clause 7.3 (*Insurance Proceeds*) in the same financial year, shall not be included in such loss calculation). "Casualty Event" shall include, but not be limited to, any taking of all or any part of an Internet Business Exchange of such Primary Obligor, in or by condemnation or other eminent domain proceedings required by law, or by reason of the temporary requisition of the use or occupancy of such Internet Business Exchange of such Primary Obligor by any person, civil or military where such condemnation, taking or eminent domain proceeding results, individually or in aggregate with any other such event affecting such Primary Obligor, in a loss of twenty per cent. (20%) or more of the Net Fixed Assets in any financial year of such Primary Obligor at the time of such event (provided that any proceeds received in respect of any such event, and applied to replace or repair the affected assets or property in accordance with Clause 7.3 (*Insurance Proceeds*) in the same financial year, shall not be included in such loss calculation).

"**Change of Control**" means any person or group of persons (other than, directly or indirectly, the Guarantor) acting in concert gaining direct or indirect control of another person. For the purposes of this definition:

(a) "**control**" of any person means:

(i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than fifty per cent. (50%) of the maximum number of votes that might be cast at a general meeting of the such person; or

(B) appoint or remove all, or the majority, of the directors or other equivalent officers of such person; or

(C) give directions with respect to the operating and financial policies of such person with which the directors or other equivalent officers of such person are obliged to comply; and/or

(ii) the holding beneficially of more than fifty per cent. (50%) of the issued share capital of such person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

(b) "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in any person by any of them, either directly or indirectly, to obtain or consolidate control of such person.

"**Closing Date**" means the date of the Utilisation of the Tranche A Facility.

"**Commitment**" means the Tranche A Commitment and /or the Tranche B Commitment, as the context requires.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 10 (*Form of Compliance Certificate*).

"**Confidential Information**" means all information relating to any Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

(a) any member of the Group or any of its advisers; or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file, electronic communication or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 35 (*Confidentiality*); or

(ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

(iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a form as set out in Schedule 12 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Administrative Borrower and the Facility Agent.

"**Consolidated EBITDA**" has the meaning given to it in Clause 20.1 (*Definitions*).

"**Consolidated Indebtedness**" has the meaning given to it in Clause 20.1 (*Definitions*).

"**Consolidated Interest Expense**" has the meaning given to it in Clause 20.1 (*Definitions*).

"**Debt Purchase Transaction**" means in relation to a person, a transaction where such person:

(a) purchases by way of assignment or transfer;

(b) enters into any sub-participation in respect of; or

(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Disposal**" means a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

"**Disruption Event**" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"**Distribution**" means any:

(a) declaration or payment of any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of a Primary Obligor's Shares (or any class of its share capital);

(b) repayment or distribution of any dividend or share premium reserve;

(c) redemption, repurchase, defeasement, retirement or repayment of any of a Primary Obligor's Shares or any resolution to do so;

(d) repayment, prepayment or payment of any principal, interest or other amounts under or in respect of any Shareholder Loans;

(e) payment of any royalties, licensing fees or other fees to any Person that is not a Primary Obligor (other than Management Fees).

"**Eligible Assignee**" means (a) any Lender, (b) an Affiliate of any Lender, and (c) another bank or financial institution or a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets; provided that an "Eligible Assignee" shall not include the Guarantor, any Primary Obligors or any of their Affiliates.

"**Embargoed Jurisdiction**" means a jurisdiction to which restrictions apply under US Federal law (including without limitation, regulations administered by the Bureau of Industry and Security of the US Department of Commerce, the Directorate of Defense Trade Control of the US Department of State, and the Office of Foreign Assets Control of the US Department of Treasury).

"**Environment**" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water).

"**Environmental Claim**" means any claim, proceeding or investigation by any person in respect of any Environmental Law.

"**Environmental Law**" means any applicable law in any jurisdiction in which any Primary Obligor conducts business which relates to:

(a) the pollution or protection of the Environment; or

(b) the generation, handling, storage, use, release or spillage of any substance which, alone, or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"**Environmental Permits**" means any Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Primary Obligor conducted on or from the properties owned or used by any Primary Obligor.

"**Equinix Asia Pacific**" means Equinix Asia Pacific Pte. Ltd., a company organised under the laws of Singapore with company registration number 200210224C.

"**Equinix** Australia" means Equinix Australia Pty. Limited ABN 25 092 807 264, an Australian corporation incorporated in the state of New South Wales.

"**Equinix Australia Deed of Charge**" means the deed of charge dated on or around the Closing Date between Equinix Australia and the Security Agent.

"**Equinix Australia Share Mortgage**" means the mortgage of shares dated on or around the Closing Date between Equinix Pacific USA and the Security Agent.

"**Equinix HK"** means Equinix Hong Kong Limited, a company with limited liability incorporated under the laws of Hong Kong with its registered address at Suite 6208, 62/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong.

"**Equinix HK Debenture**" means the deed of charge dated on or around the Closing Date between Equinix HK and the Security Agent.

"**Equinix HK Share Charge**" means the charge of shares dated on or around the Closing Date between Equinix Pacific USA and the Security Agent.

"**Equinix Japan**" means Equinix Japan K.K., a Japan *Kabushiki Kaisha*, with company registration number 0107-01-014425.

"**Equinix Japan Assignment**" means the general assignment dated on or around the Closing Date between Equinix Japan and the lenders party thereto.

"**Equinix Japan Share Pledge**" means the pledge of shares dated on or around the Closing Date between Equinix Pacific USA, the Security Agent and the lenders party thereto.

"**Equinix Pacific**" means Equinix Pacific Pte. Ltd., a company organised under the laws of Singapore with company registration number 200001886W.

"**Equinix Pacific Debenture**" means the debenture dated on or around the Closing Date between Equinix Pacific and the Security Agent.

"**Equinix Pacific Share Charge**" means the charge of shares dated on or around the Closing Date between Equinix Singapore Holdings and the Security Agent.

"**Equinix Pacific USA**" means Equinix Pacific, Inc, a Delaware Corporation, with company registration number 99-0343311.

"**Equinix Singapore**" means Equinix Singapore Pte. Ltd., a company organised under the laws of Singapore with company registration number 200000041Z.

"**Equinix Singapore Debenture**" means the debenture dated on or around the Closing Date between Equinix Singapore and the Security Agent.

"**Equinix Singapore Holdings**" means Equinix Singapore Holdings Pte. Ltd., a company organised under the laws of Singapore with company registration number 200210471C.

"**Equinix Singapore Share Charge**" means the charge of shares dated on or around the Closing Date between Equinix Singapore Holdings and the Security Agent.

"**Event of Default**" means any event or circumstance specified as such in Clause 22 (*Events of Default*).

"**Exchange Rate**" means the prevailing spot rate of exchange specified by the Facility Agent for the purpose of conversion of one currency to another, at or around 11:00 a.m. Sydney, Hong Kong, Singapore or Tokyo time in the case of a conversion involving Australian Dollars, HK Dollars, Singapore Dollars or Yen, respectively, on the date on which any such conversion of currency is to be made under this Agreement and taking into account any costs of such conversion.

"**Existing Indebtedness**" means the Financial Indebtedness described in Schedule 13 (*Existing Indebtedness*).

"**Existing L/C Facilities**" means the letter of credit and bank guarantee facilities as set out in Schedule 19 (*Existing L/C Facilities*) (including any refinancing or extension of such facilities provided that the aggregate principal amount of such facilities shall not at any time exceed US$3,000,000 (or the Approved Currency Equivalent)).

"**Existing Security**" means the Security described in Schedule 11 (*Existing Security*).

"**Facility**" means the Tranche A Facility and/or the Tranche B Facility as the context requires.

"**Facility Office**" means, with respect to an Approved Currency, the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement with respect to such Approved Currency.

"**Fee Letter**" means any letter or letters between the JMLAs and the Borrowers (or the Facility Agent, Security Agent and the Borrowers) setting out any of the fees referred to in Clause 12 (*Fees*).

"**Finance Document**" means this Agreement, any Fee Letter, any Accession Letter, the US Guarantee, the Security Documents, any Qualifying Hedging Agreement and any other document designated as such by the Facility Agent and the Administrative Borrower.

"**Finance Party**" means the Facility Agent, the Security Agent, a JMLA, a Lender and a counterparty providing a Permitted Treasury Transaction to a Borrower under a Qualifying Hedging Agreement.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

(g) any liability to redeem or purchase any redeemable share capital which is capable of being redeemed or purchased prior to the Termination Date;

(h) any Treasury Transaction (provided that, when calculating the value of such Treasury Transaction, only the marked to market value shall be taken into account);

(i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"**Further Indebtedness Request**" means a notice substantially in the form set out in Schedule 16 (*Further Indebtedness Request*).

"**GAAP**" means, in respect of any financial statements of:

(a) the Guarantor, the generally accepted accounting principles in the United States;

(b) the Australian Dollar Borrower, the Hong Kong Dollar Borrower, the Singapore Dollar Borrowers and the Yen Borrower, the generally accepted accounting principles in Australia, Hong Kong, Singapore and Japan respectively; and

(c) any Primary Obligor in a Qualifying Jurisdiction in which such Primary Obligor is incorporated, the generally accepted accounting principles in the Qualifying Jurisdiction, in each case applied on a consistent basis.

"**Group**" means the Guarantor and its Subsidiaries from time to time.

"**Guarantor**" means Equinix Inc., a Delaware corporation, the parent company of the Borrowers.

"Hedging Agreement" means any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates, basis risk or commodity prices, either generally or under specific contingencies in respect of a Permitted Treasury Transaction.

"**HIBOR**" means, with respect to any HK Dollar Loan for any Interest Period, the rate per annum for deposits in HK Dollars for a period equal to or that most closely approximates the duration of such Interest Period which appears on Reuters page "HIBOR=R"(or such other page(s) as may replace that page as determined by the Facility Agent in consultation with the Administrative Borrower) as of 11:00 a.m., Hong Kong time on the relevant Quotation Day; provided that if such rate does not appear on that page, "HIBOR" shall mean the rate expressed as a percentage to be the arithmetic mean (rounded upwards, if necessary, to the nearest four decimal places) as supplied to the Facility Agent at its request quoted by at least two Reference Banks that are leading banks as the rate at which it is offered deposits in HK Dollars and for the required period in the Hong Kong interbank market at or about 11:00 a.m., Hong Kong time.

"**HK Dollar Borrower**" means, in its capacity as the borrower of HK Dollar Loans, Equinix Hong Kong.

"**HK Dollar Lender**" means each financial institution listed in Schedule 2 (*List of HK Dollar Lenders*) (as amended from time to time), as well as any financial institution that has become a "HK Dollar Lender" by the execution of an assignment or transfer to an Eligible Assignee in accordance with Clause 23 (*Changes to the Lenders*), other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an assignment or transfer. For the purposes of this Agreement, "Lender" includes each HK Dollar Lender unless the context otherwise requires.

"**HK Dollar Loans**" means the Tranche A Loans or Tranche B Loans made by the HK Dollar Lenders to the HK Dollar Borrower pursuant to the terms hereof.

"HK Dollars" or "HKD" means the lawful currency of Hong Kong.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.

"**Information Memorandum**" means the document in the form approved by the Borrowers concerning the Guarantor and the Asia-Pacific Group which, at the Borrowers' request and on their behalf, was prepared in relation to this transaction and distributed by the JMLAs to selected financial institutions in connection with the syndication of the Facility.

"**Insurance Policies**" means those insurance policies listed in Schedule 15 (*Insurance Policies*) and all renewals and extensions thereof.

"**Insurance Proceeds**" means the proceeds of any physical loss or damage insurance policy.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or around the Closing Date and made between, among others, the Original Lenders, the Guarantor, the Borrowers, the Facility Agent and the Security Agent substantially in the form set out in Schedule 20 (*Form of Intercreditor Agreement*).

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 10 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.4 (Default interest).

"**Internet Business Exchange**" means an internet business exchange co-location facility and business exchange owned or operated by any Primary Obligor and its ancillary administrative or other support services or any facility that as a result of technological changes is substantially equivalent, or a technological successor, to any of the foregoing.

"**Investment**" by a person means any (a) loan, advance or other extension of credit, or (b) any equity investment or capital contribution (by means of transfer of cash or other property)

"**LTM Leverage Ratio**" means, at any date of determination, the ratio of (a) the aggregate of Consolidated Indebtedness of the Primary Obligors on such date, calculated in accordance with the Agreed Conversion and Aggregation Method to (b) the sum of the Consolidated EBITDA of the Primary Obligors, calculated in accordance with the Agreed Conversion and Aggregation Method for the twelve (12) month period ending on such date.

"**Leases**" means any and all leases, subleases, tenancies, options, rental agreements, occupancy agreements, and any other agreements (including all amendments, extensions, replacements, renewals, and/or modifications thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property, including without limitation, any Site Leases.

"**Lender**" means:

(a) any Original Lender; and

(b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 23 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"**Loan**" means a Tranche A Loan, a Tranche B Loan, an Australian Dollar Loan, a HK Dollar Loan, a Singapore Dollar Loan and/or a Yen Loan, as the context requires.

"**Majority Lenders**" means:

(a) if there are no Loans then outstanding, a Lender or Lenders whose US Dollar Equivalent Commitments aggregate more than 66 2/3% of the US Dollar Equivalent Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3% of the US Dollar Equivalent Total Commitments immediately prior to the reduction); or

(b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than 66 2/3% of the US Dollar Equivalent of all the Loans then outstanding.

"**Management Fees**" means, without prejudice to Clause 21.26 (*Management Fees*), any management or similar fees (whether in the form of cash, cash equivalents, shares or other property) paid by the Primary Obligors in respect of management services being any reimbursement for liabilities or amounts incurred by the provider of such services on behalf, or for the benefit, of the Primary Obligors.

"**Material Adverse Effect**" means a material adverse effect on:

(a) the assets, business, operations, condition (financial or otherwise) of (i) the Guarantor or (ii) the Primary Obligors taken as a whole; or

(b) the ability of an Obligor to perform its obligations under the Finance Documents (with respect to any obligations for which there is an expressed date of performance, on the date such obligations are due to be performed); or

(c) the validity or enforceability of any Finance Document, the rights or remedies of the Lenders under a Finance Document, or the ranking of any Security granted pursuant to any Security Document.

"**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"**Net Fixed Assets**" means at any time, with respect to a Primary Obligor the aggregate net book value of such Primary Obligor's fixed assets, in each case as determined in accordance with GAAP and by reference to the most recent financial statements for such Primary Obligor delivered under Clause 19.1(a) or (b) (*Financial Statements*).

"New Lender" has the meaning given to it in Clause 23.1 (*Assignments and Transfers by the Lenders*).

"New Primary Obligor" has the meaning given to it in Clause 24.2 (*New Primary Obligors*).

"Non-Trading Group Company" means a member of the Asia-Pacific Group which does not trade or incur (for itself or as agent for any person) any liabilities or commitments (actual or contingent, present or future) and does not own, legally or beneficially, any material assets (including, without limitation, indebtedness owed to it).

"Obligations" means (a) the obligations of each Primary Obligor from time to time arising under or in respect of the due and punctual payment of (i) the

principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of each Primary Obligor under this Agreement and the other Finance Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of each Primary Obligor under or pursuant to this Agreement and the other Finance Documents.

"**Obligor**" means a Borrower, the Guarantor, a New Primary Obligor, Equinix Pacific USA and Equinix Singapore Holdings, and for the purposes of Clause 22 (*Events of Default*), "Obligor" shall also mean Equinix Asia Pacific.

"**Original Financial Statements**" means:

(a) in relation to the Guarantor, (i) the audited consolidated financial statements of the Group for the financial year ended 31 December 2008 and (ii) the unaudited financial statements of the Group for the financial year ended 31 December 2009;

(b) in relation to a Borrower (other than Equinix Japan), its audited financial statements for its financial year ended 31 December 2008 prepared in the relevant Approved Currency;

(c) in relation to Equinix Japan, (i) the management accounts for the financial year ended 31 December 2008 prepared in Yen, and (ii) financial statements for its financial year ended 31 December 2008 prepared in Yen, in the form submitted to the relevant tax authorities in Japan; and

(d) in relation to the Borrowers, the aggregated management accounts for the financial year ended 31 December 2009, prepared in accordance with the Agreed Conversion and Aggregation Method.

"**Party**" means a party to this Agreement.

"**Permitted Business Acquisition**" means a Business Acquisition by a Primary Obligor satisfying the following conditions:

(a) any company acquired or incorporated (in each case the "**Target Company**") or any business or undertaking acquired (the "**Target**

Business") which is engaged in, or following the completion of all transactions contemplated by such Business Acquisition will be engaged in, the internet data exchange business (as carried on by the Borrowers on the Signing Date);

(b) the Administrative Borrower, has provided a Compliance Certificate certifying compliance with the financial covenants in Clause 20 (*Financial Covenants*) for the most recent Test Period then ended on a Pro Forma Basis;

(c) no Default or Event of Default is outstanding on the date of, or will result from, such Business Acquisition;

(d) if any Target Company (i) is incorporated in a Qualifying Existing Jurisdiction, or (ii) is incorporated in a Qualifying Jurisdiction and the Purchase Consideration (or any part thereof) for such Business Acquisition is funded, or in the case of any liabilities, is assumed, by the Primary Obligors, in each case, such Target Company accedes to this Agreement as a new Primary Obligor in accordance with Clause 24.2 (*New Primary Obligors*);

(e) the Purchase Consideration for any such Business Acquisition in respect of which a Target Company is required to accede to this Agreement pursuant to paragraph (d) above, does not exceed when aggregated with the Purchase Consideration of any other such Business Acquisitions made by all the Primary Obligors in the same financial year (the "**Annual Aggregate Purchase Consideration**"), fifty per cent. (50%) of the aggregate Net Fixed Assets of the Primary Obligors at the time of such Business Acquisition, provided that if the Annual Aggregate Purchase Consideration exceeds thirty per cent. (30%) of the aggregate Net Fixed Assets of the Primary Obligor at the time of such Business Acquisition, this paragraph (e) shall only be satisfied if (i) such Primary Obligor delivers to the Lenders the Due Diligence Reports in respect of such Business Acquisition and (ii) the Majority Lenders provide their prior written consent to such Business Acquisition (such consent not to be unreasonably withheld or delayed, it being understood that such consent is not required any earlier than fourteen (14) days after delivery of such Due Diligence Reports) (and for purposes of this paragraph (e), "**Due Diligence Reports**" means, in respect of a relevant Business Acquisition, (A) the report considered by the board of directors of the Guarantor to be the final management report, assessment and presentation delivered by the relevant Primary Obligor on the relevant Target Company or Target Business, and (B) any legal opinions and accounting due diligence reports or memorandums prepared by external advisors to the relevant Primary Obligor or the Guarantor on the relevant Target Company or Target Business; and

(f) with respect to any Business Acquisition in respect of which a Target Company is not required to accede to this Agreement pursuant to paragraph (d) above or has not voluntarily acceded pursuant to Clause 24.2 (*New Primary Obligors*), (i) the sale and purchase agreement and any related documentation relating to such Business Acquisition is not entered into by any Primary Obligor, and (ii) no Primary Obligor has incurred, or shall incur, any liabilities (actual or contingent) as a result of such Business Acquisition; provided that, any Primary Obligor may establish or incorporate a limited liability company (without recourse to any Primary Obligor and such company is not and shall not become a Primary Obligor) for the purpose of entering into such sale and purchase agreement and related documentation.

"**Permitted Disposal**" means a Disposal:

(a) made in the ordinary course of trade of the disposing entity;

(b) of assets in exchange for other assets comparable or superior as to type, value and quality;

(c) made by one Primary Obligor to another Primary Obligor; or

(d) of assets of a Primary Obligor, provided that the consideration received for all assets of such Primary Obligor so disposed of in any financial year shall not exceed (i) when aggregated with the consideration for all asset disposals of such Primary Obligor in the same financial year, US$5,000,000 (or its Approved Currency Equivalent), or (ii) when aggregated with the consideration for all asset disposals of all the Primary Obligors in the same financial year, US$25,000,000 (or its Approved Currency Equivalent).

"**Permitted Financial Indebtedness**" means any Financial Indebtedness:

(a) arising under the Finance Documents;

(b) arising under a Permitted Loan;

(c) arising under the Permitted Treasury Transactions;

(d) arising under any Shareholder Loans;

(e) arising under the Existing L/C Facilities;

(f) (i) incurred by any Primary Obligor in the ordinary course of trade, (ii) under bank guarantees or letters of credit, and (iii) that is secured either

(A) under the Security Documents and on the basis provided for in the Intercreditor Agreement (including, without limitation, the accession by the relevant creditors to the Intercreditor Agreement), (B) by the cash of a Primary Obligor (provided the aggregate principal amount so secured under this sub-paragraph (B) when aggregated with the aggregate principal amount of all other such Financial Indebtedness incurred by all Primary Obligors and secured under this sub-paragraph (B), does not exceed US$5,000,000), or (C) by the cash of any member of the Group which is not a Primary Obligor, provided the aggregate principal amount incurred under this paragraph (f) of which, when aggregated with the aggregate principal amount all other such Financial Indebtedness incurred by all Primary Obligors under this paragraph (f), does not exceed US$20,000,000;

(g) (i) incurred by any Primary Obligor in the ordinary course of trade, under an overdraft facility, short term loan facility, or any other facility required in connection with the ordinary course of trade of the Primary Obligor for working capital purposes, (ii) that is unsecured, and (iii) the aggregate principal amount of which, when aggregated with the aggregate principal amount all other such Financial Indebtedness incurred by all Primary Obligors under this paragraph (g), does not exceed US$10,000,000;

(h) incurred by a Primary Obligor or Primary Obligors at any time after the date falling eighteen (18) months after the Signing Date, provided that such Primary Obligor or Primary Obligors provides a Further Indebtedness Request to the Facility Agent relating to the proposed incurrence of such Financial Indebtedness no later than ten (10) Business Days prior to such proposed incurrence confirming that (A) no Default has occurred or would arise from the incurrence or creation of such Financial Indebtedness; (B) the Primary Obligor or Primary Obligors are in compliance with the financial covenants in Clause 20 (*Financial Covenants*) for the most recent Test Period then ended on a Pro Forma Basis; and (C) each of (i) the last day of the weighted average life, and (ii) the final maturity date of such Financial Indebtedness falls, on or after the Termination Date, and provided further that the creditors of such Financial Indebtedness have acceded to the Intercreditor Agreement in accordance with the terms thereof; or

(i) of any company acquired by a Primary Obligor pursuant to a Permitted Business Acquisition after the Closing Date which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or its maturity date extended in contemplation of, or since, that acquisition, and either (i) such Financial Indebtedness is outstanding only

for a period of one (1) Month following the date of acquisition or (ii) the requirements of paragraph (h) above have been satisfied with respect to such Financial Indebtedness (as if it was incurred on the date of acquisition).

"**Permitted Guarantee**" means:

(a) the endorsement of negotiable instruments in the ordinary course of trade;

(b) any performance or similar bond guaranteeing performance by a member of the Asia-Pacific Group under any contract entered into in the ordinary course of trade; or

(c) any guarantee or indemnity under the Finance Documents.

"**Permitted Investment**" means:

(a) any Permitted Loan;

(b) any equity investment in, or capital contribution to, a Primary Obligor;

(c) any Permitted Business Acquisition; and

(d) any Permitted Joint Venture.

"**Permitted Joint Venture**" means the establishment or incorporation of a joint venture entity with the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed), it being understood and agreed that any actual or potential business competition between such joint venture entity and the Primary Obligors is a basis on which such consent may be withheld.

"**Permitted Loan**" means

(a) an intercompany loan made by a Primary Obligor to another Primary Obligor which is unsecured and subordinated in right of payment and upon liquidation to the amounts payable to the Finance Parties under the Finance Documents in accordance with the Intercreditor Agreement;

(b) an intercompany loan made by a Primary Obligor to a member of the Asia-Pacific Group that is not a Primary Obligor provided that:

(i) the aggregate principal amount of such intercompany loan, together with all such intercompany loans made by Primary Obligors to members of the Asia-Pacific Group that are not Primary Obligors, does not, at any time, exceed US$10,000,000;

(ii) no Default or Event of Default is outstanding on the date of, or will result from such intercompany loan;

(iii) such intercompany loan is payable on demand, and

(iv) such Primary Obligor's rights under such intercompany loan are assigned to the Finance Parties as security for the Obligations in accordance with and subject to the Agreed Security Principles.

"**Permitted Share Transaction**" means a private sale or issuance of Shares that (i) does not cause the occurrence of a Change of Control, and (ii) are pledged to the Security Agent to secure the Obligations.

"**Permitted Treasury Transaction**" means:

(a) any hedging transaction entered into by a Borrower for the purpose of hedging up to one hundred per cent. (100%) of its actual exposure to interest rate, basis rate and/or currency liabilities in respect of any Financial Indebtedness described in paragraphs (a), (b), (e), (f), (g), (h) or (i) of the definition of "Permitted Financial Indebtedness"; or

(b) any foreign exchange transaction for spot or forward delivery entered into by a Borrower for the purpose of protecting up to one hundred per cent. (100%) of its actual exposure to fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of business, but not a foreign exchange transaction for investment or speculative purposes.

"**Primary Obligors**" means the Borrowers and any New Primary Obligors.

"**Primary Obligor Guarantee**" means the guarantee substantially in the form set out in Schedule 18 (*Primary Obligor Guarantee*).

"**Pro Forma Basis**" means, for purposes of calculating any financial term or item set forth in Section 20.1 (*Definitions*) or compliance with any financial covenant or ratio set forth in this Agreement, in each case with respect to any Test Period:

(a) any Financial Indebtedness to be assumed in connection with a Permitted Business Acquisition, a Voluntary Accession, or incurred under paragraph (h) of "Permitted Financial Indebtedness" shall be deemed (i) for purposes of calculating Consolidated Interest Expense, Debt Service and Finance Charges (as defined in Clause 20.1 (*Definitions*)), to have been assumed or incurred (as applicable) on the first day of such Test Period and to be outstanding through the last day of such Test Period, and (ii) for purposes of calculating Consolidated Indebtedness, or in respect of any incurrence of Financial Indebtedness in connection with a Permitted Business Acquisition of a Target Business with no historical

Consolidated EBITDA or in connection with Capital Expenditure or working capital, to have been assumed or incurred (as applicable) on the last day of such Test Period;

(b) any Distribution shall be deemed to have been made on the last day of such Test Period;

(c) (i) any Target Company (with respect to a Permitted Business Acquisition) or New Primary Obligor (with respect to a Voluntary Accession) shall be deemed a Primary Obligor, and (ii) any Target Business (with respect to a Permitted Business Acquisition) shall be deemed acquired by the relevant Primary Obligor, in each case, on the last day of such Test Period for purposes of (A) calculating Total Equity (as defined in Clause 20.1 (*Definitions*)), and (B) calculating the aggregate book value of all fixed assets of Primary Obligors on a consolidated basis which are subject to the Transaction Security (but only to the extent the fixed assets of such Target Company, New Primary Obligor and Target Business become subject to the Transaction Security);

(d) subject to paragraphs (a)(ii) and (c) above, any Target Company (with respect to a Permitted Business Acquisition) or any New Primary Obligor (with respect to a Voluntary Accession) shall be treated as a Primary Obligor from the first day of such Test Period; and

(e) subject to paragraphs (a)(ii) and (c) above, any Target Business (with respect to a Permitted Business Acquisition) shall be deemed acquired by the relevant Primary Obligor on the first day of such Test Period,

and "**Target Company**" and "**Target Business**" shall have the meaning given to such terms in the definition of "Permitted Business Acquisition".

"**Pro Rata Basis**" means with respect to a repayment or prepayment of any Loan, or cancellation of any Commitment, the making of such repayment or prepayment or application of such cancellation against outstanding Loans or Available Commitments of all Lenders (unless otherwise specified, under both Facilities and all Approved Currencies) on a pro rata basis based on the following with respect to the outstanding Loans (if any) or Available Commitment (if any) of a Lender under a Facility in an Approved Currency:

(a) in the case of a repayment or prepayment, an amount equal to the aggregate amount of such repayment or prepayment multiplied by the quotient obtained by dividing (i) such Lender's aggregate principal US Dollar Equivalent amount of outstanding Loans under such Facility in such Approved Currency, by (ii) the aggregate principal US Dollar Equivalent amount of Loans under both Facilities (or, in the case of paragraph (a) of Clause 6.1 (*Repayment of Loans*), the relevant Facility) and in all Approved Currencies then drawn and outstanding; and

(b) with respect to a cancellation, an amount equal to the aggregate amount of such cancellation multiplied by the quotient obtained by dividing (i) such Lender's aggregate US Dollar Equivalent amount of Available Commitment under such Facility in such Approved Currency, to (ii) the aggregate US Dollar Equivalent amount of Commitment under both Facilities and in all Approved Currencies.

"**Purchase Consideration**" means, in respect of a Business Acquisition, the consideration for such Business Acquisition, which shall include, without limitation (a) the amount of cash consideration (including the fair market value of any consideration in kind or shares), (b) the amount of associated costs and expenses, and (c) the amount of assumed Financial Indebtedness and other assumed actual or contingent liability, in each case with respect to such Business Acquisition.

"**Qualifying Existing Jurisdiction**" means any of Australia, Hong Kong, Singapore and Japan.

"**Qualifying Hedging Agreement**" means a Hedging Agreement entered into by a Borrower with a Qualifying Hedge Counterparty.

"**Qualifying Hedge Counterparty**" means a counterparty to a Hedging Agreement that is, at the time of entry into a Hedging Agreement, a JMLA or a Lender.

"**Qualifying Jurisdiction**" means any jurisdiction:

(a) which is either (i) a Qualifying Existing Jurisdiction; or (ii) an Asia-Pacific Jurisdiction and in which any proposed New Primary Obligor is incorporated and the applicable laws of which:

(A) permit such proposed New Primary Obligor to accede to this Agreement and the Intercreditor Agreement, and assume all obligations under such Finance Documents (including without limitation the obligations under the Primary Obligor Guarantee);

(B) (A) permit such proposed New Primary Obligor to grant and perfect security over such of its assets as Security for the Obligations for the benefit of the Finance Parties in accordance with the Agreed Security Principles, (provided that security shall be deemed not able or permitted to be granted or perfected to the extent that it would, in the reasonable opinion of the Facility Agent, after consultation with the Administrative Borrower (in each case

taking advice from legal counsel in the relevant jurisdiction)) result in (I) any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction; or (II) a significant risk to the officers of the relevant grantor of Security of contravention of their fiduciary duties and/or of civil or criminal liability), and (B) permit the shareholder of such proposed New Primary Obligor to grant security over its shares in such proposed New Primary Obligor;

(C) permit the enforcement of the Primary Obligor Guarantee or such Security (or exercise of any rights thereunder), and the recovery of proceeds as a result thereof and application of such proceeds against the Obligations; and

(b) which is not an Embargoed Jurisdiction.

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined, three (3) Business Days before the first day of that period, unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one (1) day, the Quotation Day will be the last of those days).

"**Real Property**" has the meaning given to it in Clause 18.15 (*Properties*).

"**Reference Banks**" means each of DBS, ING and RBS.

"**Relevant Interbank Market**" means, with respect to (i) Australian Dollars, the Sydney interbank market; (ii) HK dollars, the Hong Kong interbank market; (iii) Singapore Dollars, the Singapore interbank market; and (iv) Yen, the Tokyo interbank market.

"**Repeating Representations**" means each of the representations set out in Clause 18 (*Representations*) other than Clause 18.8 (*Deduction of tax*), Clause 18.9 (*No filing or stamp taxes*), Clause 18.11(b) *(No Misleading Information)*, Clause 18.11(c) *(No Misleading Information)*, Clause 18.12(a) *(Financial Statements)*, Clause 18.12(b) *(Financial Statements)*, Clause 18.15(b) (*Properties*), Clause 18.20 (*Environmental laws*), Clause 18.24(a) (*Ranking*), Clause 18.26 (*Tranche A*) and Clause 18.28 (*Asia-Pacific Group Structure Chart*).

"**Representative**" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"**Secured Property**" means all the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Documents**" means (a) the Equinix Australia Deed of Charge, (b) the Equinix Australia Share Mortgage, (c) the Equinix HK Debenture, (d) the Equinix HK Share Charge, (e) the Equinix Singapore Debenture, (f) the Equinix Singapore Share Charge, (g) the Equinix Pacific Debenture, (h) the Equinix Pacific Share Charge, (i) the Equinix Japan Assignment, (j) the Equinix Japan Share Pledge, (k) the Intercreditor Agreement and (l) (i) each other security document or pledge agreement or guarantee delivered in accordance with applicable law to grant a security interest in any property as security for the Obligations, and all financing statements or instruments of perfection, in each case as required by this Agreement, the Security Documents, (ii) any other such security document or pledge agreement to be filed with respect to the security interests in property and fixtures created pursuant to the Security Documents and any guarantee under applicable law with respect to the Obligations, and (iii) any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest on any property as security for the Obligations.

"**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 6 (*Requests*) given in accordance with Clause 10 (*Interest Periods*).

"**Shareholder"** means the Guarantor and any of its Subsidiaries or Affiliates (other than any Primary Obligor).

"**Shareholder Bridge Loan**" means a loan made by or on behalf of the Shareholders to any Primary Obligor on or after the Signing Date, but no later than the day immediately prior to the initial Utilisation Date.

"**Shareholder Loans**" means (a) any loan, advance or other extension of credit made by or on behalf of the Shareholders to any Primary Obligor and which is unsecured and subordinated in right of payment and upon liquidation to the amounts payable to the Finance Parties under the Finance Documents in accordance with the Intercreditor Agreement, whether made before, on, or after the Signing Date, and (b) any Shareholder Bridge Loan.

"**Shares**" means the issued shares of any class of the capital of a Primary Obligor.

"**Signing Date**" means the date of execution of this Agreement by all Parties.

"**Singapore**" means the Republic of Singapore.

"Singapore Dollar Borrowers" means, in their capacity as the borrowers of the Singapore Dollar Loans, Equinix Singapore and Equinix Pacific.

"**Singapore Dollar Lenders**" means each financial institution listed in Schedule 3 (*List of Singapore Dollar Lenders*) (as amended from time to time), as well as any financial institution that has become a "Singapore Dollar Lender" hereto by the execution of an assignment or transfer to an Eligible Assignee in accordance with Clause 23 (*Changes to the Lenders*), other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an assignment or transfer. For the purposes of this Agreement, "Lender" includes each Singapore Dollar Lender unless the contract otherwise requires.

"**Singapore Dollar Loans**" means the Tranche A Loans or Tranche B Loans made by the Singapore Dollar Lenders to the Singapore Dollar Borrowers pursuant to the terms hereof.

"**Singapore Dollars**" or "**SGD**" means the lawful money of Singapore.

"**Site Lease**" means a Lease in respect of an Internet Business Exchange.

"**SOR**" means with respect to any Singapore Dollar Loan for any Interest Period, the rate per annum for deposits in Singapore Dollars for a period equal to or that most closely approximates the duration of such Interest Period which appears on Reuters page ABSIRFIX01 (or such other page(s) as may replace that page as determined by the Facility Agent in consultation with the Administrative Borrower) as of 11:00 a.m., Singapore time on the relevant Quotation Day; provided that if such rate does not appear on that page, "SOR" shall mean the rate expressed as a percentage to be the arithmetic mean (rounded upwards, if necessary, to the nearest four decimal places) as supplied to the Facility Agent at its request quoted by at least two Reference Banks that are leading banks as the rate at which it is offered deposits in Singapore Dollars and for the required period in the Singapore interbank market at or about 11:00 a.m., Singapore time.

"**Specified Time**" means:

(a) with respect to an Australian Dollar Loan, 11.00 a.m. (Sydney time) on the relevant date;

(b) with respect to a HK Dollar Loan, 11.00 a.m. (Hong Kong time) on the relevant date;

(c) with respect to a Singapore Dollar Loan, 11.00 a.m. (Singapore time) on the relevant date; and

(d) with respect to a Yen Loan, 11.00 a.m. (Tokyo time) on the relevant date.

"Subsidiary" means in relation to a company or a corporation, a company or a corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;

(b) more than (or, for the purposes of the definition of "Affiliate" as used in Clause 23.1 (*Assignments and Transfers by the Lenders*) and Clause 35 (*Confidentiality*) only, at least) 50% of the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and, for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of a majority of its board of directors or equivalent body.

"**Syndication Closing Date**" means the earlier of (a) the date that the JMLAs confirm that primary syndication of the Facility has closed, and (b) 30 June 2010.

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Termination Date**" means the date falling sixty (60) Months from the Signing Date.

"**Test Period**" means, for any determination under this Agreement, the period of four consecutive financial quarters of a Primary Obligor ending on each of March 31, June 30, September 30 or December 31.

"**TIBOR**" means with respect to any Yen Loan for any Interest Period (a) the interest rate offered for Yen deposits for a period equal to or that most closely approximates the applicable Interest Period which appears on the screen display designated as "Reuters Screen TIBM" under the caption "Average of 10 Banks" on the Reuters Service (or such other screen display or service as may replace it for the purpose of displaying Tokyo interbank offered rates of prime banks for Yen deposits as determined by the Facility Agent in consultation with the Administrative Borrower) at or about 11:00 am (Tokyo time) on the relevant Quotation Day or (b) if no such interest rate is available on the Reuters Service (or such replacement), the interest rate offered for Yen deposits for a period equal to or that most closely approximates the applicable Interest Period which appears on the screen display designated as "Euro-Yen TIBOR" on page 23070 of the

Telerate Service published by the Japanese Bankers Association (or such other screen display or service as may replace it for the purpose of displaying Tokyo interbank offered rates of prime banks for Yen deposits) at or about 11:00 am (Tokyo time) on the relevant Interest Rate Setting Date.

"**Total Commitments**" means the aggregate of the Commitments.

"**Tranche A Commitment**" means, with respect to:

(a) an Australian Dollar Lender, the amount specified by its name and designated "Tranche A Commitment" in Schedule 1 (*List of Australian Dollar Lenders*), to the extent not transferred, cancelled or reduced under this Agreement;

(b) a HK Dollar Lender, the amount specified by its name and designated "Tranche A Commitment" in Schedule 2 (*List of HK Dollar Lenders*), to the extent not transferred, cancelled or reduced under this Agreement;

(c) a Singapore Dollar Lender, the amount specified by its name and designated "Tranche A Commitment" in Schedule 3 (*List of Singapore Dollar Lenders*), to the extent not transferred, cancelled or reduced under this Agreement; and

(d) a Yen Lender, the amount specified by its name and designated "Tranche A Commitment" in Schedule 4 (*List of Yen Lenders*), to the extent not transferred, cancelled or reduced under this Agreement.

"**Tranche A Facility**" means the term loan facility made available under this Agreement as described in Clause 2.1(a) (*The Facilities*).

"**Tranche A Loan**" means a loan made or to be made under the Tranche A Facility or the principal amount outstanding for the time being of that loan.

"**Tranche B Commitment**" means, with respect to:

(a) an Australian Dollar Lender, the amount specified by its name and designated "Tranche B Commitment" in Schedule 1 (*List of Australian Dollar Lenders*), to the extent not transferred, cancelled or reduced under this Agreement;

(b) a HK Dollar Lender, the amount specified by its name and designated "Tranche B Commitment" in Schedule 2 (*List of HK Dollar Lenders*), to the extent not transferred, cancelled or reduced under this Agreement; and

(c) a Singapore Dollar Lender, the amount specified by its name and designated "Tranche B Commitment" in Schedule 3 (*List of Singapore Dollar Lenders*), to the extent not transferred, cancelled or reduced under this Agreement.

"**Tranche B Facility**" means the term loan facility made available under this Agreement as described in Clause 2.1(b) (*The Facilities*).

"**Tranche B Loan**" means a loan made or to be made under the Tranche B Facility or the principal amount outstanding for the time being of that loan.

"**Transaction Security**" means the Security created or expressed to be created in favour of the Lenders or the Security Agent pursuant to the Security Documents.

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 8 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Administrative Borrower.

"**Transfer Date**" means, in relation to an assignment or a transfer, the later of:

(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

(b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

"**Treasury Transaction**" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"United States" means the United States of America.

"**Unpaid Sum**" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"US Dollar Equivalent" means at any time (a) as to any amount denominated in US Dollars, the amount thereof at such time, and (b) as to any amount denominated in any other currency, the equivalent amount in US Dollars calculated by the Facility Agent at such time using the Exchange Rate in effect on the Business Day of determination.

"**US Dollars**" or "**US$**" means the lawful money of the United States of America.

"**US Guarantee**" means the New York law guarantee entered into between the Guarantor, the Facility Agent and the Security Agent dated on or about the Closing Date.

"**Utilisation**" means a utilisation of a Facility (or any part thereof).

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in Part I of Schedule 6 (*Requests*).

"**Voluntary Accession**" has the meaning given to it in Clause 24.2 (*New Primary Obligors*).

"Yen" or "**¥**" means the lawful money of Japan.

"Yen Borrower" means, in its capacity as the borrower of the Yen Loans, Equinix Japan.

"**Yen Lenders**" means each financial institution listed on Schedule 4 (*List of Yen Lenders*) (as amended from time to time), as well as any financial institution that has become a "Yen Lender" hereto by the execution of an assignment or transfer to an Eligible Assignee in accordance with Clause 23 (*Changes to the Lenders*), other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an assignment or transfer. For the purposes of this Agreement, "Lender" includes each Yen Lender unless the contract otherwise requires.

"**Yen Loans**" means the Tranche A Loans made by the Yen Lenders to the Yen Borrower pursuant to the terms hereof.

1.2 Construction

(a) Unless a contrary indication appears, any reference in this Agreement to:

(i) any "**Borrower**", the "**Facility Agent**", any "**Finance Party**", the "**JMLAs**", the "**Guarantor**", any "**Lender**", any "**New Primary Obligor**", any "**Party**", any "**Primary Obligor**", any "**Obligor**", or the "**Security Agent**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

(ii) "**assets**" includes present and future properties, revenues and rights of every description;

(iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

(iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(v) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(vi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, only if compliance with such regulation, rule, official directive, request or guideline is in accordance with the general practice of persons to whom it is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(vii) the term "**ordinary course of trade"** shall include actions taken in the ordinary course of expanding the existing business of the relevant party (but, for the avoidance of doubt, shall be without prejudice to any condition or restriction set forth in the definition of "Permitted Business Acquisition" or Clause 21.6 (*Business Acquisitions and Investments*).

(viii) a provision of law is a reference to that provision as amended or re-enacted.

(b) Section, Clause and Schedule headings are for ease of reference only.

(c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(d) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.

1.3 Third Party Rights

(a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.

(b) Except as permitted by Clause 34.2(a)(B) (*Exceptions*), notwithstanding any other term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

2. THE FACILITIES

2.1 The Facilities

Subject to the terms of this Agreement:

(a) (i) each Australian Dollar Lender agrees, severally and not jointly, to make Australian Dollar term loans to the Australian Dollar Borrower during the Availability Period in the principal amount not to exceed such Australian Dollar Lender's Tranche A Commitment;

(ii) each HK Dollar Lender agrees, severally and not jointly, to make HK Dollar term loans to the HK Dollar Borrower during the Availability Period in the principal amount not to exceed such HK Dollar Lender's Tranche A Commitment;

(iii) each Singapore Dollar Lender agrees, severally and not jointly, to make Singapore Dollar term loans to the Singapore Dollar Borrowers during the Availability Period in the principal amount not to exceed such Singapore Dollar Lender's Tranche A Commitment; and

(iv) each Yen Lender agrees, severally and not jointly, to make Yen term loans to the Yen Borrower during the Availability Period in the principal amount not to exceed such Yen Lender's Tranche A Commitment.

(b) (i) each Australian Dollar Lender agrees, severally and not jointly, to make Australian Dollar term loans to the Australian Dollar Borrower during the Availability Period in the principal amount not to exceed such Australian Dollar Lender's Tranche B Commitment;

(ii) each HK Dollar Lender agrees, severally and not jointly, to make HK Dollar term loans to the HK Dollar Borrower during the Availability Period in the principal amount not to exceed such HK Dollar Lender's Tranche B Commitment; and

(iii) each Singapore Dollar Lender agrees, severally and not jointly, to make Singapore Dollar term loans to the Singapore Dollar Borrowers during the Availability Period in the principal amount not to exceed such Singapore Dollar Lender's Tranche B Commitment.

2.2 Obligations and Representations

Notwithstanding anything to the contrary contained elsewhere in this Agreement, it is understood and agreed by the various parties to this Agreement that:

(a) all obligations to repay principal of, interest on, and all other amounts with respect to, outstanding Loans (including, without limitation, all fees, indemnities, taxes and other obligations in connection therewith or in connection with the related Commitment) shall constitute the joint and several obligations of all of the Borrowers and (ii) all obligations set forth in Clause 21 (*General Undertakings*) expressed to be undertaken by a Primary Obligor individually or the Primary Obligors collectively shall be deemed to be an undertaking by each Primary Obligor and all the Primary Obligors collectively. Each Borrower acknowledges and agrees that it is receiving direct benefits as a result of the extensions of credit to them hereunder, and that the Lenders may proceed against any or all the Borrowers with respect to any obligations hereunder for the payment in full thereof. Each Borrower acknowledges and agrees that it shall remain liable for any obligation described above of the other Borrowers regardless of whether it has drawn any Loans or incurred any other obligations (other than the obligations described in this Clause 2.2) and notwithstanding the repayment in full of its own obligations described above in this Clause 2.2; and

(b) all representations and warranties (including without limitation, those set forth in Clause 18 (*Representations*) given by or in respect of any Primary Obligor are deemed given by such Primary Obligor and all other Primary Obligors collectively.

2.3 Primary Obligor Guarantee

Without prejudice or limitation to the obligations set forth in Clause 2.2 (*Obligations and Representations*), each Primary Obligor agrees to, and agrees to be bound by, the obligations set forth in Schedule 18 (*Primary Obligor Guarantee*).

3. PURPOSE

3.1 Purpose

(a) Each Borrower shall apply or shall procure that all amounts borrowed by it under the Tranche A Facility are used towards (i) repaying the Existing Indebtedness and any Shareholder Bridge Loan (to the extent such Shareholder Bridge Loan was used for the purposes of refinancing or repaying Existing Indebtedness or any obligations thereunder) in full, and (ii) financing any fees, costs and expenses referred to in Clause 12 (*Fees*) and Clause 17.1(a) (*Transaction Expenses*).

(b) Each Borrower shall apply or shall procure that all amounts borrowed by it under the Tranche B Facility are used towards funding (i) Capital Expenditure identified in the Business Plan, or as otherwise agreed by the Majority Lenders, (ii) or with respect to an amount up to US$25,000,000 (or its Approved Currency Equivalent), for Capital Expenditure of the Borrowers across the four Qualifying Existing Jurisdictions, (iii) the general corporate purposes of the Borrowers (provided that such amounts outstanding borrowed under this sub-paragraph (iii) shall not exceed ten per cent. (10%) of the aggregate Tranche B Commitment at any time), and (iv) together with any concurrent Utilisation of the Tranche A Facility, the repayment of any Shareholder Bridge Loan (to the extent such Shareholder Bridge Loan was used for the purposes of Capital Expenditure of the Borrowers) in full.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

No Borrower may deliver a Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part I of Schedule 5 (*Conditions precedent*) in form and substance reasonably satisfactory to the Facility Agent. The Facility Agent shall notify the Administrative Borrower and the Lenders promptly upon being so satisfied.

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

(a) no Default is continuing or would result from the proposed Loan;

(b) the Repeating Representations are true in all material respects, as if made by each Primary Obligor on the date of the Utilisation Request and on the proposed Utilisation Date; and

(c) with respect to a Utilisation Request for any Tranche B Loan, the Existing Indebtedness has been or will be, concurrently with the Utilisation and application of the Tranche A Loans, repaid in full.

SECTION 3
UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

A Borrower may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time three (3) Business Days before the proposed Utilisation Date.

5.2 Completion of a Utilisation Request

(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

(i) the proposed Utilisation Date is a Business Day within the Availability Period;

(ii) the currency and amount of the Utilisation each comply with Clause 5.3 (*Currency and amount*); and

(iii) the proposed Interest Period complies with Clause 10 (*Interest Periods*).

(b) Only one Loan may be requested in each Utilisation Request.

(c) In respect of the Tranche B Facility:

(i) only three (3) Utilisations may be made on any day; and

(ii) no more than five (5) Utilisations may be made in any Month.

(d) A Utilisation Request for a Tranche A Loan in a particular Approved Currency must be accompanied by Utilisation Requests for Tranche A Loans in each of the other Approved Currencies, in each case for the Utilisation of such Tranche A Loans on the same day.

5.3 Currency and amount

(a) The currency specified in a Utilisation Request must be an Approved Currency.

(b) The amount of a proposed Tranche A Loan must be in an aggregate principal amount that is equal to the Approved Currency Equivalent of the Available Facility.

(c) The amount of a proposed Tranche B Loan must be in an aggregate principal amount that is (i) an integral multiple of the Approved Currency Equivalent of US$250,000 and (ii) not less than the lesser of (A) the Approved Currency Equivalent of US$5,000,000 and (B) the Available Facility.

5.4 Lenders' participation

(a) If with respect to any Utilisation Request the conditions set out in Clauses 4.1 (*Initial conditions precedent*), 4.2 (*Further conditions precedent*), and this Clause 5 have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan, in each case with respect to the relevant Approved Currency and Facility.

(c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan not later than the Specified Time, three (3) Business Days before the proposed Utilisation Date.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period provided that the Tranche B Commitment with respect to each Approved Currency shall be cancelled following the expiry of the Availability Period of the Tranche A Facility if the Tranche A Facility has not been drawn in full by such time.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

(a) The Borrowers shall repay to the Facility Agent, for the account of the relevant Lender, the Loans on the dates and in the corresponding amount calculated as a percentage of the aggregate principal amount of such Loans outstanding at the end of the Availability Period, in each case as set out in Schedule 7 (*Repayment Schedule*) it being understood and agreed that all such repayments shall be made on the Pro Rata Basis together in each case with accrued and unpaid interest on the principal amount to be paid.

(b) Notwithstanding any other provision of this Agreement, any Loans then outstanding shall be repaid in full on the Termination Date.

6.2 Currency of Repayment

All principal repayments shall be made in the same currency as the currency in which the Loan being repaid is denominated.

6.3 Reborrowing

No Borrower may reborrow any part of the Facility which is repaid.

7. MANDATORY PREPAYMENT

7.1 Disposal of Internet Business Exchanges

Upon the Disposal (or execution by one or more Primary Obligors of a binding contract for the purposes of a Disposal) of all or substantially all of the assets comprising the Internet Business Exchanges of the Primary Obligors, the Facility Agent shall, by not less than five (5) days' notice to the Administrative Borrower, cancel the Total Commitments and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

7.2 Other Disposals or Incurrence of Financial Indebtedness

(a) If a Primary Obligor receives any proceeds from a Disposal or incurrence of Financial Indebtedness which, in each case, is not expressly permitted by the terms of this Agreement, then such Primary Obligor shall forthwith notify the Facility Agent and all such proceeds or an amount equal to such proceeds (or in each case the US Dollar Equivalent thereof) shall be applied by the Borrowers within five (5)

days of receipt of the same, in prepayment of the Loans in accordance with, and subject to, clause 11 (*Application of Proceeds*) of the Intercreditor Agreement, and on the Pro Rata Basis.

(b) Any prepayment under this Clause 7.2 shall satisfy the obligations of the Borrowers under Clause 6.1 (*Repayment of Loans*) in inverse order of maturity.

7.3 Insurance Proceeds

(a) If a Primary Obligor receives any Insurance Proceeds with respect to a Casualty Event, and does not apply, or demonstrate to the satisfaction of the Facility Agent that it has taken reasonable steps to apply, any such proceeds within six (6) Months of receipt to replace or repair the affected assets or property, then it shall forthwith notify the Facility Agent and all such proceeds or an amount equal to such proceeds (or in each case the US Dollar Equivalent thereof) shall be applied by the Borrowers within five (5) days of receipt of such notification, in prepayment of the Loans in accordance with, and subject to, clause 11 (*Application of Proceeds*) of the Intercreditor Agreement, and on the Pro Rata Basis.

(b) Any prepayment under this Clause 7.3 shall satisfy the obligations of the relevant Borrower under Clause 6.1 (*Repayment of Loans*) in inverse order of maturity.

7.4 Other Amounts

Any other amounts that are received by the Finance Parties pursuant to the Intercreditor Agreement as part of a transaction involving the prepayment of any other Financial Indebtedness shall be applied by the Borrowers in prepayment of the Loans in accordance with, and subject to, clause 11 (*Application of Proceeds*) of the Intercreditor Agreement, and on the Pro Rata Basis.

7.5 Change of control of any Primary Obligor

Upon the occurrence of a Change of Control with respect to any Primary Obligor:

(a) the Administrative Borrower shall promptly notify the Facility Agent upon becoming aware of that event;

(b) no Lender shall be obliged to fund a Utilisation; and

(c) the Facility Agent shall, by not less than five (5) days' notice to the Administrative Borrower, cancel the Total Commitments and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

8. PREPAYMENT AND CANCELLATION

8.1 Illegality

After the Signing Date, if it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

(a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;

(b) upon the Facility Agent notifying the Administrative Borrower, the Commitment of that Lender will be immediately cancelled; and

(c) the relevant Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Facility Agent has notified the Administrative Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law).

8.2 Voluntary cancellation

The Borrowers may, if they give the Facility Agent not less than ten (10) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being an integral multiple of the Approved Currency Equivalent of US$250,000 and not less than the Approved Currency Equivalent of US$1,000,000) of the Available Facility. Any cancellation under this Clause 8.2 shall reduce the Commitments of the Lenders on the Pro Rata Basis.

8.3 Voluntary prepayment of Loans

(a) The Borrowers may, if they give the Facility Agent not less than ten (10) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan provided that (i) the amount of such prepayment shall be in an amount that is an integral multiple of the Approved Currency Equivalent of US$250,000 and not less than the Approved Currency Equivalent of US$1,000,000 or, if less, the outstanding principal amount of such Loan (ii) such prepayment is made on the Pro Rata Basis and (iii) such prepayment is accompanied by all sums due and payable under this Agreement and the other Finance Documents, including, but not limited to Break Costs, if any, and all of the Lenders' costs and expenses (including reasonable attorney's fees and disbursements) incurred by the Lenders in connection with such prepayment.

(b) Any prepayment under this Clause 8.3 shall satisfy the obligations under Clause 6.1 (*Repayment of Loans*) in inverse order of maturity.

8.4 Restrictions

(a) Any notice of cancellation or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

(b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

(c) No Borrower may reborrow any part of the Facility which is prepaid.

(d) The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

(e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

(f) If the Facility Agent receives a notice under this Clause 8 it shall promptly forward a copy of that notice to either the Administrative Borrower or the affected Lender, as appropriate.

(g) If all or part of a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this paragraph (g) shall reduce the Commitments of the Lenders rateably.

(h) Save as otherwise specified herein, the Borrowers shall prepay the Loans on the Pro Rata Basis.

SECTION 5
COSTS OF UTILISATION

9. INTEREST

9.1 Calculation of Applicable Margin

(a) Subject to sub-clauses (b) and (c) below, the Applicable Margin shall be 3.5% per annum for the period of 12 Months from the Signing Date and thereafter shall be (i) 3.5% per annum if the LTM Leverage Ratio is greater than or equal to 3.0:1.0; (ii) 3.0% per annum if the LTM Leverage Ratio is greater than or equal to 2.0:1.0 but less than 3.0:1.0; and (iii) 2.5% per annum if the LTM Leverage Ratio is less than 2.0:1.0.

(b) Subject to sub-clause (c) below, any changes to the Applicable Margin shall be determined by the Facility Agent based on information with respect to the LTM Leverage Ratio included in each Compliance Certificate delivered pursuant to Clause 19.2 (*Compliance Certificate*) and shall take effect from the first Business Day of the next succeeding Interest Period following the date on which such Compliance Certificate is required to be delivered under this Agreement (or the date such Compliance Certificate is delivered under this Agreement, if later).

(c) If an Event of Default has occurred or any such Compliance Certificate is not delivered in accordance with the terms of this Agreement, as from the date of occurrence of such Event of Default or failure to deliver, the Applicable Margin shall be 3.5% per annum until such time as such Event of Default or failure to deliver has been cured or waived in accordance with the terms of this Agreement whereupon the Applicable Margin shall be determined in accordance with the foregoing provisions of this Clause 9.1, provided that if a Compliance Certificate is delivered within five (5) Business Days after the date on which it was required to be delivered in accordance with the terms of this Agreement, and on any date falling after the date of required delivery and prior to the date of such actual delivery, in respect of any Loan any Interest Period ended and a new Interest Period started, for the purpose of paragraph (b) above, the Compliance Certificate shall, in respect of such Loan, be deemed delivered on the date it was required to be delivered under this Agreement.

9.2 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(a) Applicable Margin; and

(b) the Applicable Benchmark Rate.

9.3 Payment of interest

Each Borrower shall pay accrued interest on a Loan on the last day of each Interest Period.

9.4 Default interest

(a) If a Primary Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two per cent (2.0%) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 9.4 shall be immediately payable by the Primary Obligor on demand by the Facility Agent.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent (2.0%) higher than the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9.5 Notification of rates of interest

The Facility Agent shall promptly notify the Lenders and the Administrative Borrower of the determination of a rate of interest under this Agreement.

10. INTEREST PERIODS

10.1 Selection of Interest Periods

(a) A Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.

(b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Administrative Borrower, on behalf of the Borrower to which that Loan was made not later than the Specified Time, three (3) Business Days before the proposed Utilisation Date or the last day of the then current Interest Period as the case may be.

(c) If the Administrative Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will be one (1) Month.

(d) Subject to this Clause 10, a Borrower may select an Interest Period of one (1), three (3) or six (6) Months or any other period agreed between the Borrower and the Facility Agent (acting on the instructions of all the Lenders).

(e) An Interest Period for a Loan shall not extend beyond the Termination Date.

(f) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

10.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10.3 Consolidation of Loans

If two or more Interest Periods:

(a) relate to Loans in the same currency and under the same Facility made to the same Borrower; and

(b) end on the same date,

those Loans will, unless that Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

11. CHANGES TO THE CALCULATION OF INTEREST

11.1 Absence of quotations

Subject to Clause 11.2 (*Market disruption*), if the Applicable Benchmark Rate is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the relevant Quotation Day, the Applicable Benchmark Rate shall be determined on the basis of the quotations of the remaining Reference Banks.

11.2 Market disruption

(a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Applicable Margin; and

(ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.

(b) In this Agreement "**Market Disruption Event**" means:

(i) at or about noon on the Quotation Day for the relevant Interest Period the Applicable Benchmark Rate is not available and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine the Applicable Benchmark Rate for the relevant currency and Interest Period; or

(ii) before close of business in Sydney, Hong Kong, Singapore or Tokyo, as the case may be, on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed thirty three per cent. (33%) of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of the Applicable Benchmark Rate.

11.3 Alternative basis of interest or funding

(a) If a Market Disruption Event occurs and the Facility Agent or the relevant Borrower so requires, the Facility Agent and the relevant Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.

(b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the relevant Borrower, be binding on all Parties.

(c) In the event that no substitute basis is agreed at the end of the thirty (30) day period, the rate of interest shall be determined (or continue to be determined) in accordance with Clause 11.2 (*Market Disruption*).

11.4 Break Costs

(a) Each Borrower shall, within five (5) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

(b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

12. FEES

12.1 Upfront fee

The Borrowers shall pay to the Facility Agent for the account of each Lender an upfront fee in the amount and at the times agreed in the relevant Fee Letter.

12.2 Commitment fee

(a) The Borrowers shall pay to the Facility Agent (for the account of each Lender) a commitment fee equal to fifty per cent. (50%) of the Applicable Margin calculated daily on the undrawn amount of the Commitment of each Lender during the Availability Period.

(b) The accrued commitment fee is payable in arrears (i) (A) on the date falling three months after the Signing Date and (B) on the last date of each successive three month period thereafter, provided, in each case, such dates fall within the Availability Period; (ii) on the last day of the Availability Period and, (iii) if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

12.3 Agency fees

The Borrowers shall pay to the Facility Agent and the Security Agent (each for its own account) an agency fee in the amount and at the times agreed in the relevant Fee Letter.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

13. TAX GROSS UP AND INDEMNITIES

13.1 Definitions

(a) In this Clause 13:

"**Associate**" has the meaning given to it in Section 128F(9) of the Tax Act.

"**Indirect Tax**" means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

"**Offshore Associate**" means an Associate:

(i) which is a non-resident of Australia and does not become a Lender or receive a payment in carrying on a business in Australia at or through a permanent establishment of the Associate in Australia; or

(ii) which is a resident of Australia and which becomes a Lender or receives a payment in carrying on a business in a country outside Australia at or through a permanent establishment of the Associate in that country; and

which does not become a Lender and receive payment in the capacity of a clearing house, custodian, funds manager or responsible entity of a registered scheme.

"**Tax Act**" means the Income Tax Assessment Act 1936 (Australia).

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Tax Payment**" means an increased payment made by a Primary Obligor to a Finance Party under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 13 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

13.2 Tax gross-up

(a) All payments to be made by a Primary Obligor to any Finance Party under the Finance Documents shall be made free and clear of and without any Tax Deduction, unless such Primary Obligor is required to

make a Tax Deduction, in which case the sum payable by such Primary Obligor (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that such Finance Party receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.

(b) Each Primary Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the relevant Primary Obligor.

(c) If a Primary Obligor is required to make a Tax Deduction, that Primary Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(d) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Primary Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

13.3 Tax indemnity

(a) Without prejudice to Clause 13.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be received or receivable by such Finance Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Primary Obligors shall, within five (5) Business Days of demand of the Facility Agent, promptly indemnify the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, provided that this Clause 13.3 shall not apply to:

(i) any Tax imposed on and calculated by reference to the net income actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for purposes of

Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which such Finance Party is incorporated; or

(ii) any Tax imposed on and calculated by reference to the net income of the Facility Office of such Finance Party actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which its Facility Office is located.

(b) A Finance Party intending to make a claim under paragraph (a) shall promptly notify the Facility Agent of the event giving rise to the claim, whereupon the Facility Agent shall notify the relevant Primary Obligors.

(c) A Finance Party shall, on receiving a payment from a Primary Obligor under this Clause 13.3, notify the Facility Agent.

13.4 Tax Credit

If a Primary Obligor makes a Tax Payment and the relevant Finance Party determines that:

(a) a Tax Credit is attributable to that Tax Payment; and

(b) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Primary Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Primary Obligor.

13.5 Stamp taxes

The Primary Obligors shall (a) pay and, (b) within five (5) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.6 Indirect tax

(a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall, upon receipt of a tax invoice in respect of such Indirect Tax, pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.

(b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all Indirect Tax incurred by that Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.

13.7 JMLAs' representations, warranties and undertakings

Each JMLA undertakes, represents and warrants to the Borrowers as follows:

(a) It will make before the 30th day after the date of this Agreement, invitations to become a Lender under this Agreement:

(i) to at least ten parties, each of whom, as at the date the relevant invitation is made, the JMLAs' relevant officers involved in the transaction on a day to day basis believe carries on the business of providing finance or investing or dealing in securities in the course of operating in financial markets, for the purposes of Section 128F(3A)(a)(i) of the Tax Act, and each of whom has been disclosed to the Borrowers; or

(ii) in an electronic form that is used by financial markets for dealing in debentures (as defined in Section 128F(9) of the Tax Act) or debt interests (as defined in Sections 974-15 and 974-20 of the Income Tax Assessment Act 1997) such as Reuters or Bloomberg.

(b) At least ten (10) of the parties to whom the JMLAs have made or will make invitations referred to in paragraph (a)(i) above are not, as at the date the invitations are made, to the knowledge of the relevant officers of the JMLAs involved in the transaction, Associates of any of the others of those ten (10) offerees.

(c) It has not made and will not make offers or invitations referred to in paragraph (a)(i) above to parties whom its relevant officers involved in the transaction on a day to day basis are aware are Offshore Associates of the Australian Dollar Borrower.

13.8 Australian Dollar Borrower's confirmation

(a) The Australian Dollar Borrower confirms that none of the potential offerees whose names were disclosed to it by a JMLA before the date of this Agreement were known or suspected by it to be an Offshore Associate of the Australian Dollar Borrower or an Associate of any other such offeree.

(b) It will immediately advise the JMLAs or the Facility Agent if the potential offerees disclosed to it by a JMLA or the Facility Agent are known or suspected by it to be an Offshore Associate of the Australian Dollar Borrower or an Associate of any other offeree.

13.9 Lenders' representations and warranties

Each Lender represents and warrants to the Borrowers that if it received an invitation under Clause 13.7(a)(i) (*JMLA representations, warranties and undertakings*), at the time it received the invitation, it was carrying on the business of providing finance, or investing or dealing in securities, in the course of operating in financial markets.

13.10 Information

Each JMLA and each Lender will provide to the Australian Dollar Borrower when reasonably requested by the Australian Dollar Borrower any factual information in its possession or which it is reasonably able to provide to assist the Australian Dollar Borrower to demonstrate (based upon tax advice received by the Australian Dollar Borrower) that Section 128F of the Tax Act has been satisfied where to do so will not in a JMLA's or Lender's reasonable opinion breach any law or regulation or any duty of confidence.

13.11 Co-operation if Section 128F requirements not satisfied

If, for any reason, the requirements of Section 128F of the Tax Act have not been satisfied in relation to interest payable on Loans (except to an Offshore Associate of the Australian Dollar Borrower), then on request by the Facility Agent, a JMLA or the Australian Dollar Borrower, each party shall co-operate and take steps reasonably requested with a view to satisfying those requirements:

(a) where a Finance Party breached Clause 13.7 (*JMLA representations, warranties and undertakings*) or Clause 13.9 (*Lenders' representations and warranties*), at the cost of that Finance Party; or

(b) in all other cases, at the cost of the Borrowers.

14. INCREASED COSTS

14.1 Increased costs

(a) Subject to Clause 14.3 (*Exceptions*) the Primary Obligors shall, within five (5) Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the Signing Date. The terms "**law**" and "**regulation**" in this paragraph (a) shall include, without limitation, any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.

(b) In this Agreement "**Increased Costs**" means:

(i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital (including, without limitation, as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by such Finance Party);

(ii) an additional or increased cost; or

(iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

14.2 Increased cost claims

(a) A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the relevant Primary Obligors.

(b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

14.3 Exceptions

(a) Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by a Primary Obligor;

(ii) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because the exclusion in paragraph (a) of Clause 13.3 (*Tax indemnity*) applied); or

(iii) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(b) In this Clause 14.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 13.1 (*Definitions*).

15. OTHER INDEMNITIES

15.1 Currency indemnity

(a) If any sum due from a Primary Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

(i) making or filing a claim or proof against that Primary Obligor;

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Primary Obligor shall as an independent obligation, within five (5) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Primary Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

15.2 Other indemnities

(a) The Primary Obligors shall, within five (5) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

(i) the occurrence of any Default;

(ii) a failure by a Primary Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 27 (*Sharing among the Finance Parties*);

(iii) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);

(iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower;

(v) the Information Memorandum or any other information produced or approved by the Borrowers being or being alleged to be misleading or deceptive in any respect; or

(vi) any enquiry, investigation, subpoena (or similar order) or litigation with respect to transactions contemplated or financed under this Agreement.

(b) Each Primary Obligor shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) in connection with or arising out of the transactions contemplated by the Finance Documents (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning such transactions), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 15.2 (subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act).

15.3 Indemnity to the Facility Agent

The Borrowers shall promptly indemnify the Facility Agent against any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:

(a) investigating any event which it reasonably believes is a Default; or

(b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

16. MITIGATION BY THE LENDERS

16.1 Mitigation

(a) Each Finance Party shall, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*), or Clause 14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of any Primary Obligor under the Finance Documents.

16.2 Limitation of liability

(a) The Borrowers shall promptly indemnify each other Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).

(b) A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

17. COSTS AND EXPENSES

17.1 Transaction expenses

The Borrowers shall promptly on demand pay the JMLAs and the Facility Agent, upon presentation of all relevant invoices, the amount of all out of pocket costs and expenses (including legal, travel, accommodation, printing, signing, syndication and listing fees, costs and expenses) reasonably incurred by any of them in connection with the due diligence, negotiation, preparation, printing, execution, delivery and syndication of:

(a) this Agreement and any other documents referred to in this Agreement; and

(b) any other Finance Documents executed after the Signing Date.

17.2 Amendment costs

If (a) a Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 28.11 (*Change of currency*), the Borrowers shall, subject to presentation of all relevant invoices, within five (5) Business Days of demand, reimburse the Facility Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Facility Agent in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 Enforcement costs

The Borrowers shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18. REPRESENTATIONS

(a) Each Borrower makes the representations and warranties set out in this Clause 18 to each Finance Party on the Signing Date and the Closing Date.

(b) Each New Primary Obligor makes the Repeating Representations on the date of its accession to this Agreement.

18.1 Status

(a) It is a corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

(b) It has the power to own its assets and carry on its business as it is being conducted.

18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 24 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

(a) any law or regulation applicable to it;

(b) its memorandum or articles of association (or equivalent constitutional documents); or

(c) any agreement or instrument binding upon it or any of its assets.

18.4 Power and authority

(a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

(b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

18.5 Validity and admissibility in evidence

All Authorisations required:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;

(b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and

(c) to carry on its business,

have been obtained or effected and are in full force and effect (save, in the case of sub-clause (c), where the failure to obtain effect or keep in full force and effect such Authorisations could not reasonably be expected to have a Material Adverse Effect).

18.6 Governing law and enforcement

(a) The choice of English law as the governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation; and

(b) any judgment obtained in England in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation,

in each case subject to any general principles of law, qualifications or limitations in any legal opinion to be delivered pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 24.2 (*New Primary Obligors*).

18.7 Insolvency

No corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 22.7 (*Insolvency proceedings*) has been taken or, to the best of its knowledge and belief (after due and careful enquiries), threatened in relation to an Obligor, and none of the circumstances described in Clause 22.6 (*Insolvency*) applies to an Obligor.

18.8 Deduction of Tax

Subject to Clause 13 (*Tax Gross up and indemnities*), no Primary Obligor is required to make any deduction for or on account of Tax from any payment it may make under any Finance Document, other than Equinix Singapore and Equinix Pacific which in each case, under the laws of the Republic of Singapore in force on the Signing Date, will be required to make a deduction or withholding for or on account of tax from any payment of, or in the nature of, interest, commission, fees or other payments where such payment is derived or deemed from Singapore for the purpose of the Income Tax Act, Chapter 134 of Singapore (the "**Income Tax Act**") , if made to any Lender not resident in Singapore within the meaning of the Income Tax Act in connection with any Financial Indebtedness under the Finance Documents, at the rate set out in the Income Tax Act as reduced by any applicable exemptions, waivers or double-tax treaties.

18.9 No filing or stamp taxes

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, save for any such filing or registration requirement or any such Tax or fee payable specifically referred to in any legal opinion delivered in accordance with Clause 4.1 (*Initial conditions precedent*) and which will be made or paid promptly after the date of the relevant Finance Document or in accordance with the provisions of the relevant Finance Document.

18.10 No default

(a) No Event of Default is (i) continuing or (ii) might reasonably be expected to result from the making of any Utilisation, provided the representation and warranty under this sub-paragraph (ii) shall be made by the Borrowers only.

(b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might have a Material Adverse Effect.

18.11 No misleading information

(a) As far as it is aware, after due and careful enquiries, any factual information provided to the Lenders by any member of the Asia-Pacific Group (including without limitation (to the knowledge of the Borrowers only) for the purposes of the Information Memorandum) was true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it was stated.

(b) Any financial projection or forecast contained in the Information Memorandum has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.

(c) As far as it is aware, after due and careful enquiries, nothing has occurred or been omitted from the Information Memorandum and no information has been given or withheld that results in the information contained in the Information Memorandum being untrue or misleading in any material respect.

(d) There has been no material adverse change in its business or financial condition, or the consolidated business or financial condition of (i) the Guarantor or (ii) each Primary Obligor (other than Equinix Japan), since the date of its latest audited consolidated financial statements and, with respect to Equinix Japan, the date of its latest financial statements in the form submitted to the relevant tax authorities in Japan.

18.12 Financial statements

(a) The Original Financial Statements were prepared in accordance with (i) GAAP consistently applied and (ii) as applicable, the Agreed Conversion and Aggregation Method.

(b) The Original Financial Statements fairly represent the financial condition and operations of the Guarantor, the relevant Borrower or the Borrowers taken as a whole (or consolidated in the case of the Guarantor) during the relevant financial year.

(c) Except as set forth in its latest audited consolidated financial statements (or, with respect to Equinix Japan, its latest financial statements in the form submitted to the relevant tax authorities in Japan), there are no liabilities of any Primary Obligor of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than liabilities under the Finance Documents.

18.13 Pari passu ranking

Its payment obligations under the Finance Documents rank at least*pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.14 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.

18.15 Properties

(a) It has good title to, or valid leasehold interests in, all its property material to its business, including its Internet Business Exchanges, free and clear from any Security (other than Security permitted by the Finance Documents). The property of the Primary Obligors, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) and (ii) constitutes all the property which is required for the business and operations of the Primary Obligors as presently conducted.

(b) Schedule 14 (*Real Property*) contains a true and complete list of each interest in property owned, leased, subleased or otherwise occupied or utilized by each Primary Obligor including, without limitation, the Site Leases and the Internet Business Exchanges (the "**Real Property**"), as of the Signing Date and describes the type of interest therein held by such Primary Obligor and whether any Lease requires the consent of the landlord or tenant thereunder, or other party thereto, to the transactions contemplated by the Finance Documents.

18.16 Site Leases

Any Site Leases to which it is a party are in full force and effect, it has not received notice of violation or termination thereof, and neither it nor any of its counterparties thereunder are in breach of any of their material obligations thereunder.

18.17 No Casualty Event

It has not received any notice of, and has no knowledge of, the occurrence or pendency or contemplation of any Casualty Event.

18.18 Intellectual Property

It:

(a) is the owner of or has licensed to it or otherwise possesses legally enforceable rights to use on normal commercial terms all the intellectual property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;

(b) has not received any notice that, in carrying on its business, it infringes any intellectual property of any third party in any material respect; and

(c) has made all registrations with, applications to any governmental agency in respect of any material intellectual property owned by it, save for the payment of any fees and compliance with renewal procedures prescribed by applicable law.

18.19 Insurance

All Insurance Policies maintained by it and the Guarantor are in full force and effect, all premiums have been duly paid, and it has not received notice of violation or cancellation or material change in coverage thereof.

18.20 Environmental laws

(a) It is in compliance with Clause 21.13 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

(b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against it where that claim has or is reasonably likely, if determined against that Primary Obligor, to have a Material Adverse Effect.

18.21 No breach of laws

(a) It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

(b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against it which have or are reasonably likely to have a Material Adverse Effect.

18.22 No restriction on cash movement

Other than (i) for the period from the Signing Date to the first Utilisation Date, with respect to the agreements evidencing the Existing Indebtedness and, (ii) any agreement documenting the Financial Indebtedness permitted under paragraph (i) of the definition of "Permitted Financial Indebtedness", there is no agreement that prohibits, restricts or imposes any condition upon its ability to:

(a) create, incur or permit to exist any Security upon any of the Secured Property;

(b) pay dividends or other distributions with respect to any of its shares or to make or repay loans or advances to any Primary Obligor or to guarantee the Financial Indebtedness of any Primary Obligor;

(c) lend money to another Primary Obligor (other than any restrictions set out in the Finance Documents); or

(d) sell, lease or transfer any of its properties or assets to any Primary Obligor.

18.23 Taxation

(a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax which might reasonably be expected to have a Material Adverse Effect.

(b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.

(c) It is resident for Tax purposes only in the jurisdiction of its incorporation.

18.24 Ranking

(a) On the Closing Date, upon repayment of the Existing Indebtedness and release of the Existing Security, the Transaction Security has or will have first ranking priority and will not be subject to any prior ranking or pari passu ranking security.

(b) The Transaction Security has or will have first ranking priority and will not be subject to any prior ranking or pari passu ranking security.

18.25 Shares

Any of its shares which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights and its constitutional documents do not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security (subject, in the case of Equinix Japan, to a board resolution being passed to this effect). There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Primary Obligor (including any option or right of pre-emption or conversion).

18.26 Tranche A

Upon Utilisation of the Tranche A Loans all Existing Indebtedness will be repaid in full, and all Existing Security will be released.

18.27 Permitted Financial Indebtedness

Any Financial Indebtedness under this Agreement shall at all times rank at least pari passu with any Permitted Financial Indebtedness that is incurred.

18.28 Asia-Pacific Group Structure Chart

The Asia-Pacific Group Structure Chart is true, complete and accurate in all material respects and shows the following information:

(a) each member of the Asia-Pacific Group, including current name and company registration number, its jurisdiction of incorporation and/or establishment, a list of shareholders and indicating whether a company is not a company incorporated with limited liability; and

(b) all minority interests in any member of the Asia-Pacific Group and any person in which any member of the Asia-Pacific Group holds shares in its issued share capital or equivalent ownership interest of such person.

18.29 Non-Trading Group Companies

Other than (a) making payments and incurring liabilities with respect to Management Fees, Shareholder Loans and/or employee related costs incurred in the ordinary course of trade, (b) the employment of individuals in the ordinary course of trade, and (c) entering into certain contracts for the benefit of itself and the Primary Obligors or in connection with the foregoing, each of Equinix Pacific

USA, Equinix Singapore Holdings and Equinix Asia Pacific are, and will remain as Non-Trading Group Companies and have acted only, and will act only as a Holding Company of another member of the Asia-Pacific Group.

18.30 Repetition

The Repeating Representations are deemed to be made by each Primary Obligor by reference to the facts and circumstances then existing on:

(a) the date of each Utilisation Request and the first day of each Interest Period; and

(b) in the case of a New Primary Obligor, the day on which the company accedes as a New Primary Obligor, in accordance with Clause 24.2 (*New Primary Obligors*).

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial statements

The Administrative Borrower shall supply to the Facility Agent in sufficient copies for all the Lenders:

(a) as soon as the same become available, but in any event within two hundred and seventy (270) days after the end of each financial year with respect to each Primary Obligor, and within sixty (60) days after the end of each financial year with respect to the Guarantor, (i) the audited financial statements for that financial year for each Primary Obligor (other than Equinix Japan) and the Guarantor respectively (consolidated in the case of the Guarantor or such Primary Obligor and its Subsidiaries, if applicable, but excluding any of such Primary Obligor's Subsidiaries which are not Primary Obligors), and (ii) the financial statements for Equinix Japan for such financial year in the form submitted to the relevant tax authorities in Japan; and

(b) as soon as the same become available, but in any event within sixty (60) days after the end of each financial quarter, (i) the financial statements for that financial quarter for the Guarantor and (ii) the management accounts for the financial quarter for each Primary Obligor (consolidated with its Subsidiaries, if applicable, but excluding any of its Subsidiaries which are not Primary Obligors) showing, in each case, the financial results for the Guarantor and such Primary Obligor for the (x) last financial quarter and (y) the financial year-to-date, in each case as certified by an authorised director of such Primary Obligor or the Guarantor.

(c) together with any financial statements delivered under clause (b) of this Clause 19.1 with respect to a Primary Obligor (but excluding any of its Subsidiaries which are not Primary Obligors) which are denominated in a currency other than US Dollars, a separate financial statement in US Dollars (the "**Converted Financial Statements**"), as converted from the original currency amounts using a method (the "**Agreed Conversion Method**") that (i) is the same method used for the purposes of consolidating such financial statements to meet the Guarantor's financial reporting requirements, and (ii) is in accordance with GAAP as applicable to the Guarantor;

(d) together with any financial statements of the Primary Obligors delivered under clause (c) of this Clause 19.1, a separate financial statement in US Dollars aggregating the financial results of the Primary Obligors (but excluding any of its Subsidiaries which are not Primary Obligors) under the Converted Financial Statements using a method (such method, together with the Agreed Conversion Method, the "**Agreed Conversion and Aggregation Method**") that (i) is the same method used for the purposes of consolidating such financial statements to meet the Guarantor's financial reporting requirements, and (ii) is in accordance with GAAP as applicable to the Guarantor.

(e) together with any financial statements of the Borrowers delivered under clause (a) or (b) of this Clause 19.1, if and to the extent such financial statements have not been prepared using the GAAP on which the Original Financial Statements of such Borrower were prepared, a reconciliation statement setting out the financial information that would have been stated had such GAAP applied and statement of such Borrower detailing any such changes and the effect thereof.

19.2 Compliance Certificate

(a) The Administrative Borrower shall supply to the Facility Agent, with each set of the financial statements delivered pursuant to paragraph (d) of Clause 19.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) financial information and computations as to (i) compliance with Clause 20 (*Financial covenants*) as at the date as at which those financial statements were drawn up (together with, without limitation, for the purposes of calculating the Annualized Leverage Ratio, the relevant financial results for the period of six (6) months ending on the last day of such financial quarter) and (ii) the LTM Leverage Ratio as at such date (together with, without limitation, the relevant financial results for the period of twelve (12) months ending on the last day of such financial quarter).

(b) Each Compliance Certificate shall be signed by an authorised director of the Administrative Borrower.

19.3 Requirements as to financial statements

Each set of financial statements delivered by the Administrative Borrower pursuant to Clause 19.1 (*Financial statements*) shall be certified by an authorised director of the relevant Obligor as (a) fairly representing its financial condition as at the date as at which those financial statements were drawn up, and (b) as having been prepared using GAAP consistently applied and, in respect of the financial statements described in Clause 19.1(c) and (d) above the Agreed Conversion and Aggregation Method.

19.4 Budgets

The Administrative Borrower shall supply to the Facility Agent in sufficient copies for all the Lenders:

(a) no later than sixty (60) days after the commencement of each financial year, (i) a budget for each Primary Obligor in form reasonably satisfactory to the Facility Agent (in such relevant Approved Currency and in US Dollars in accordance with the Agreed Conversion and Aggregation Method), but to include balance sheets, statements of income and cash flow statements, for each quarter of such financial year prepared in the form agreed between the JMLAs and the Administrative Borrower, in each case, with appropriate presentation and discussion of the principal assumptions upon which such budgets are based, accompanied by the statement of an authorised director of such Primary Obligor to the effect that the budget of such Primary Obligor has been approved by the Guarantor is a reasonable estimate for the periods covered thereby, and (ii) an aggregate budget (denominated in US Dollars) for all the Primary Obligors in accordance with the Agreed Conversion and Aggregation Method;

(b) promptly when available, any significant revisions of any budget delivered under sub-clause (a) above; and

(c) any budgets or revisions thereto, delivered by the Administrative Borrower in accordance with paragraphs (a) and (b) above shall be certified by an authorised director of the relevant Obligor.

19.5 Information: miscellaneous

Each Primary Obligor shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

(a) all documents dispatched by such Primary Obligor to its shareholders (or any class of them) or its creditors generally in connection with circumstances which have a Material Adverse Effect at the same time as they are dispatched;

(b) promptly upon becoming actually aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Asia-Pacific Group, and which might, if adversely determined, have a Material Adverse Effect;

(c) promptly, such further information regarding the financial condition, business and operations of any member of the Asia-Pacific Group as any Finance Party (through the Facility Agent) may reasonably request;

(d) promptly, the occurrence of any Casualty Event and, as the Facility Agent may reasonably request, further information regarding such occurrence;

(e) promptly, such information as the Security Agent may reasonably require about the compliance of the Obligors with the terms of any Security Documents;

(f) promptly, notice of any change in authorised signatories of any Obligor signed by an authorised director or company secretary of such Obligor accompanied by specimen signatures of any new authorised signatories; and

(g) promptly, notice of any change to the memorandum or articles of association (or equivalent constitutional documents) of any Obligor.

19.6 Real Property

The Administrative Borrower shall supply to the Facility Agent, on each anniversary of the Signing Date, an updated (as applicable) Schedule 14 (*Real Property*), certified by an authorised director of the Administrative Borrower.

19.7 Notification of default

(a) Each Primary Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Primary Obligor is aware that a notification has already been provided by another Primary Obligor).

(b) Promptly upon a request by the Facility Agent, each Primary Obligor shall supply to the Facility Agent a certificate signed by an authorised director on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.8 Use of websites

(a) Each Primary Obligor may satisfy its obligation under this Agreement to deliver any information to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Administrative Borrower and the Facility Agent (the "**Designated Website**") if:

(i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

(ii) both the Primary Obligors and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and

(iii) the information is in a format previously agreed between the Administrative Borrower and the Facility Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Facility Agent shall notify the Administrative Borrower accordingly and the relevant Primary Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the relevant Primary Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Administrative Borrower and the Facility Agent.

(c) The Primary Obligors shall promptly upon becoming aware of its occurrence notify the Facility Agent if:

(i) the Designated Website cannot be accessed due to technical failure;

(ii) the password specifications for the Designated Website change;

(iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

(iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

(v) the Primary Obligors become aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If any Primary Obligor notifies the Facility Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Primary Obligors under this Agreement after the date of that notice shall be supplied in paper form.

(d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Primary Obligors shall comply with any such request within ten (10) Business Days.

19.9 "Know your customer" checks

(a) If:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signing Date;

(ii) any change in the status of an Obligor after the Signing Date; or

(iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Facility Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Primary Obligor shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Facility Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(b) Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other

evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(c) Each Borrower shall, by not less than ten (10) Business Days' prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries or Affiliates becomes a New Primary Obligor.

(d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Subsidiary or Affiliate obliges the Facility Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Primary Obligors shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Facility Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary or Affiliate to this Agreement as a New Primary Obligor.

20. FINANCIAL COVENANTS

The undertakings in this Clause 20 (*Financial Covenants*) remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Definitions

"**Cash Flow**" means, with respect to a Primary Obligor for any period, Consolidated EBITDA for such Primary Obligor and for such period:

(a) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital of such Primary Obligor for such period;

(b) adding the amount of any cash receipts (and deducting the amount of any cash payments) during such period in respect of any Exceptional Items;

(c) adding the amount of any cash receipts during such period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during such period by such Primary Obligor;

(d) adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing Consolidated EBITDA for such Primary Obligor;

(e) deducting the amount of any Capital Expenditure actually made during such period by such Primary Obligor and the aggregate of any cash consideration paid for, except (in each case) to the extent funded from:

(A) the proceeds of Disposals or Insurance Proceeds received by such Primary Obligor permitted to be retained for this purpose;

(B) proceeds from the issuance of Shares or incurrence of Shareholder Loans by such Primary Obligor;

(f) adding the aggregate principal amount of Tranche B Loans drawn by such Primary Obligor during such period if any; and

(g) adding the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness of such Primary Obligor if applicable, whether paid, payable or capitalised by such Primary Obligor in respect of such period **excluding** any upfront fees or costs,

and so that no amount shall be added (or deducted) more than once, determined on a consolidated basis in accordance with GAAP.

"**Consolidated EBITDA**" means, with respect to a Primary Obligor for any period, the profit or loss from operations (with respect to such Primary Obligor, calculation of "consolidated profit or loss from operations" includes all cash expenses (but excluding any upfront fees or upfront financing costs) relating to the business of such Primary Obligor and after deduction of Management Fees paid by such Primary Obligor) plus depreciation, amortization, accretion, non-cash stock-based compensation expense, non-cash restructuring charges, and such other cash restructuring charges as agreed by the Facility Agent in writing, in each case for such period and for such Primary Obligor, determined on a consolidated basis in accordance with GAAP.

"**Consolidated Indebtedness**" means, with respect to a Primary Obligor at any time, the amount of all Financial Indebtedness of such Primary Obligor, determined on a consolidated basis in accordance with GAAP.

"**Consolidated Interest Expense**" means, with respect to a Primary Obligor for any period, the aggregate amount of all of the following insofar as they are

payable by such Primary Obligor (in the case of commissions and fees), or accrue in respect of indebtedness of such Primary Obligor (in any other case), during such period:

(a) interest, commissions and fees in respect of moneys borrowed (including without limitation, any hedging expenses); and

(b) discounts in respect of bills, notes or debts discounted, and that part of any amount under a financing lease or hire purchase, credit sale, conditional sale or deferred payment agreement which represents any of the foregoing (for this purpose, a discount shall be apportioned over the period for which that bill, note or debt is to be outstanding and shall be deemed to accrue from day to day during that period),

determined on a consolidated basis in accordance with GAAP.

"**Current Assets**" means, with respect to a Primary Obligor at any time, the amount of trading stock, trade and other debtors and prepayments of such Primary Obligor (but excluding cash at bank and prepaid interest) maturing within twelve months from the relevant testing date.

"**Current Liabilities**" means, with respect to a Primary Obligor at any time, the amount of all liabilities (including trade creditors, accruals, trading provisions, other creditors and deferred income and payments received in advance) of such Primary Obligor falling due within twelve months from the relevant testing date but excluding Financial Indebtedness of such Primary Obligor (and any interest on that Financial Indebtedness) falling due within such period and excluding amounts due in respect of dividends or taxation.

"**Debt Service**" means, with respect to a Primary Obligor for any period, the consolidated amount of:

(a) Finance Charges of such Primary Obligor for such period;

(b) the aggregate of all scheduled repayments of Financial Indebtedness of such Primary Obligor falling due during such period excluding:

(i) any mandatory prepayment made pursuant to Clause 7.2 (*Other Disposals or Incurrence of Financial Indebtedness*) or Clause 7.3 (*Insurance Proceeds*); and

(ii) any prepayment of Existing Indebtedness,

and so that no amount shall be included more than once, determined on a consolidated basis in accordance with GAAP.

"**Exceptional Items**" means, with respect to a Primary Obligor, exceptional, one off, non-recurring or extraordinary items and any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

(a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;

(b) disposals, revaluations or impairment of non-current assets;

(c) disposals of assets associated with discontinued operations; and

(d) realized gains and losses under any Treasury Transaction.

"**Finance Charges**" means, with respect to a Primary Obligor for any period, the amount of all accrued interest, commission, fees, discounts, prepayment fees, premiums or charges in respect of any Financial Indebtedness of (but excluding Financial Indebtedness under any Treasury Transaction) such Primary Obligor (if applicable) whether paid, payable or capitalised by such Primary Obligor in respect of such period **excluding** any upfront fees or costs, determined on a consolidated basis in accordance with GAAP.

"**Relevant Proceeds**" means, with respect to a Primary Obligor for any period, proceeds from any Disposals, any incurrence of Financial Indebtedness or Insurance Proceeds which have been mandatorily prepaid in accordance with this Agreement over such period.

"**Total Equity**" means with respect to a Primary Obligor at any time, the aggregate of:

(a) the nominal paid-up value of any Shares issued by such Primary Obligor;

(b) the principal amount of any Shareholder Loans incurred by such Primary Obligor at such time;

(c) the principal amount standing to the credit of any share premium or equivalent account of such Primary Obligor at such time, and

(d) the principal amount of such Primary Obligor's retained earnings and reserves,

determined on a consolidated basis in accordance with GAAP.

"**Working Capital**" means, on any date, in respect of any Primary Obligor, Current Assets less Current Liabilities, determined on a consolidated basis in accordance with GAAP.

20.2 Financial Covenants

The Primary Obligors will ensure that:

(a) at the end of each Test Period set forth below, the Annualized Leverage Ratio shall not exceed the ratio set forth below applicable to such Test Period:

Test Periods ending	Ratio
March 31, 2010 to (and including) December 31, 2011	3.5:1.0
On or after March 31, 2012	3.0:1.0

(b) in respect of each Test Period set forth below, the ratio of (i) the aggregate Consolidated Indebtedness of the Primary Obligors at the end of such Test Period calculated in accordance with the Agreed Conversion and Aggregation Method to (ii) the aggregate Total Equity of the Primary Obligors calculated in accordance with the Agreed Conversion and Aggregation Method at the end of such Test Period shall not exceed the ratio set forth below applicable to such Test Period:

Test Periods ending	Ratio
March 31, 2010 to (and including) December 31, 2012	2.5:1.0
On or after March 31, 2013	2.0:1.0

(c) in respect of each Test Period set forth below, the ratio of (i) the aggregate Consolidated EBITDA of the Primary Obligors for such Test Period calculated in accordance with the Agreed Conversion and Aggregation Method to (ii) the aggregate Consolidated Interest Expense of the Primary Obligors for such Test Period calculated in accordance with the Agreed Conversion and Aggregation Method shall not be less than the ratio set forth below applicable to such Test Period:

Test Periods ending	Ratio
March 31, 2010 to (and including) December 31, 2011	5.0:1.0
March 31, 2012 to (and including) December 31, 2012	8.0:1.0
On or after March 31, 2013	10.0:1.0

(d) in respect of each Test Period, the ratio of (i) the aggregate Cash Flow of the Primary Obligors for such Test Period calculated in accordance with the Agreed Conversion and Aggregation Method to (ii) the aggregate Debt Service of the Primary Obligors for such Test Period calculated in accordance with the Agreed Conversion and Aggregation Method shall not be less than 1.5:1.0; and

(e) in respect of each Test Period, the ratio of (i) the aggregate book value of all fixed assets of the Primary Obligors on a consolidated basis which are subject to the Transaction Security at the end of such Test Period calculated in accordance with the Agreed Conversion and Aggregation Method to (ii) the aggregate Consolidated Indebtedness of the Primary Obligors that is secured at the end of such Test Period, calculated in accordance with the Agreed Conversion and Aggregation Method shall not be less than 1.2:1.0 at any time.

20.3 Testing

Compliance by the Primary Obligors with the financial covenants set forth in this Clause 20 (*Financial Covenants*) shall be tested quarterly on each of March 31, June 30, September 30 and December 31, and on an aggregate basis (with respect to the Primary Obligors), with the exception of Clause 20.2(e) (*Financial Covenants*) which shall be tested half-yearly on each of June 30 and December 31.

20.4 Calculations and Currency

Unless otherwise specifically provided for herein:

(a) all calculations and terms used under this Clause 20 (*Financial Covenants*) shall be calculated (i) in a manner, and given the meaning consistent with, respectively, applicable GAAP, (ii) in accordance with the Agreed Conversion and Aggregation Method, (if applicable), and (iii) on a Pro Forma Basis; and

(b) any computation with respect to the consolidation of a Primary Obligor and its Subsidiaries shall not include any of its Subsidiaries which are not Primary Obligors.

21. GENERAL UNDERTAKINGS

The undertakings in this Clause 21 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 Authorisations

Each Primary Obligor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

21.2 Compliance with laws

Each Primary Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply could reasonably be expected to have a Material Adverse Effect.

21.3 Negative pledge

In this Clause 21.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

(a) No Primary Obligor shall create or permit to subsist any Security over any of its assets.

(b) No Primary Obligor shall:

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by another Primary Obligor;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

(i) prior to the first Utilisation Date, any Security or Quasi-Security listed in Schedule 11 (*Existing Security*);

(ii) any Financial Indebtedness permitted by paragraph (f) of the definition of "Permitted Financial Indebtedness";

(iii) any netting or set-off arrangement entered into by any Primary Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(iv) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a Primary Obligor for the purpose of a Permitted Treasury Transaction, excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;

(v) any lien arising by operation of law and in the ordinary course of trade;

(vi) any Security or Quasi-Security over or affecting any asset acquired by a Primary Obligor after the Signing Date if:

(A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a Primary Obligor;

(B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a Primary Obligor; and

(C) the Security or Quasi-Security is removed or discharged within one (1) Month of the date of acquisition of such asset;

(vii) any Security or Quasi-Security over or affecting any asset of any company which becomes a Primary Obligor after the Signing Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a Primary Obligor, if:

(A) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;

(B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and

(C) the Security or Quasi-Security is removed or discharged within one (1) Month of that company becoming a Primary Obligor;

(viii) any Security or Quasi-Security entered into pursuant to, or arising under, the Finance Documents; and

(ix) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to another Primary Obligor in the ordinary course of trade and on the supplier's standard or usual terms and not arising as a result of any default or omission by another Primary Obligor.

21.4 Disposals

(a) Except as permitted under paragraph (b) below, no Primary Obligor shall enter into any Disposal.

(b) Paragraph (a) above does not apply to any Permitted Disposal.

21.5 Merger

No Primary Obligor shall enter into any amalgamation, demerger, merger or corporate reconstruction.

21.6 Business Acquisitions and Investments

(a) Except as permitted under paragraph (b) below, no Primary Obligor shall make a Business Acquisition or an Investment.

(b) Paragraph (a) does not apply to a Permitted Investment.

21.7 New Affiliates

Each Primary Obligor shall procure that any Affiliate in any Qualifying Existing Jurisdiction (other than any existing Primary Obligor or any Holding Company) shall accede as a New Primary Obligor in accordance with Clause 24.2 (*New Primary Obligors*) within one (1) month of the establishment or incorporation of such Affiliate.

21.8 Pari Passu

Each Primary Obligor shall ensure that its Obligations shall at all times rank at least*pari passu* with all its other present and future unsecured and unsubordinated indebtedness except for obligations mandatorily preferred by law.

21.9 Consent and filings

Each Primary Obligor shall ensure that there shall be:

(a) obtained, complied with and promptly renewed and maintained all Authorisations of;

(b) made all filings, recordings, registrations or enrolments with; and

(c) paid any stamp, registration or similar tax to be paid to,

any governmental authorities or agencies or courts (if any) required under any applicable law or regulation to enable the relevant Primary Obligor to perform its obligations under the Finance Documents or to ensure the legality, validity and enforceability of the Finance Documents.

21.10 Site Leases

(a) Each Primary Obligor shall maintain and comply in all material respects with the terms of the Site Leases to which it is a Party.

(b) Each Primary Obligor shall not amend any terms of the Site Leases to which it is a Party where such amendment would reasonably be expected to have a Material Adverse Effect.

21.11 Insurances

Each Primary Obligor shall maintain, renew as required and comply in all respects with the Insurance Policies on and in relation to its business and assets against those risks and to the extent usual for companies carrying on the same or substantially the same business and procure that all Insurance Policies are with reputable independent insurance companies or underwriters and name the Security Agent as loss payee or additional insured, as the case may be.

21.12 Consents in respect of Site Leases

(a) With the exception of paragraph (b) below, each Primary Obligor shall provide to the Security Agent evidence of landlord consent to access (each a "**Landlord Consent**") from the counterparties (the "**Relevant Site Lessor**") to each Site Lease which, with respect to the Site Leases in effect at the Signing Date, shall be on terms no less favourable to the Security Agent as the landlord consent to access obtained in respect of such Site Leases pursuant to the terms of the Existing Indebtedness, provided that (i) if no Landlord Consent to access was obtained from the Relevant Site Lessor pursuant to the Existing Indebtedness, the relevant Primary Obligor shall only be required to use its commercially best endeavours to provide to the Security Agent evidence of a Landlord Consent with respect to such Site Leases, and (ii) each Primary Obligor shall only be required to use its commercially best endeavours to obtain Landlord Consent in respect of Site Leases not in effect at the Signing Date.

(b) In addition to, and without prejudice to, the obligation in paragraph (a) above, each Primary Obligor shall use its commercially best efforts to obtain, together with, or as part of, each Landlord Consent:

(i) an acknowledgement by the relevant Site Lessor of the right of the Security Agent to cure any default of any applicable Site Lease by such Primary Obligor;

(ii) agreement by the Relevant Site Lessor to provide to the Security Agent notice of any default under any applicable Site Lease;

(iii) acknowledgement by the Relevant Site Lessor of the right of the Security Agent to access the Internet Business Exchange that is the subject of such Site Lease following any default of such Site Lease by such Primary Obligor, or if a Default has occurred and is continuing;

(iv) acknowledgement of the Relevant Site Lessor of the Transaction Security on the equipment and other tangible assets and property on the Internet Business Exchange and waiver of any such Relevant Site Lessor's lien on such equipment, property and assets; and

(v) acknowledgement of the Relevant Site Lessor of the Transaction Security over the Shares in such Primary Obligor and the potential enforcement thereof by the Lenders not constituting a default under such Site Lease nor an assignment of such Site Lease.

21.13 Environmental Compliance

Each Primary Obligor shall:

(a) comply in all material respects with all Environmental Law, obtain and maintain any Environmental Permits; and

(b) take all reasonable steps in anticipation of known or expected future changes to or obligations under Environmental Law or any Environmental Permits, provided that such Primary Obligor is actually aware of such changes.

21.14 Environmental Claims

Each Primary Obligor shall inform the Facility Agent in writing as soon as reasonably practicable upon becoming aware of:

(a) any Environmental Claim which has commenced or (to the best of such Primary Obligor's knowledge and belief) is threatened against any such Primary Obligor, or

(b) any facts or circumstances which will or might reasonably be expected to result in any Environmental Claim being commenced or threatened against any Primary Obligor,

in each case where such Environmental Claim might reasonably be expected, if determined against that Primary Obligor, to have a Material Adverse Effect.

21.15 Changes to Internet Business Exchanges

The Primary Obligors shall procure that no change is made to the facilities and equipment of the Internet Business Exchanges where this would be reasonably likely to have a Material Adverse Effect.

21.16 Change of business

Each Primary Obligor shall procure that no substantial change is made to (i) the general nature of its business from that carried on at the Signing Date, and (ii) the general nature of the business of the Primary Obligors (taken as a whole) from that carried on at the Signing Date.

21.17 Financial Indebtedness

(a) Except as permitted under paragraph (b) below, no Primary Obligor shall incur, or allow to remain outstanding, any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Permitted Financial Indebtedness.

(c) No Primary Obligor shall amend, extend, supplement, modify or waive the terms of any Financial Indebtedness incurred by it under paragraph (h) of the definition of "Permitted Financial Indebtedness" unless, such Financial Indebtedness, as amended, extended, supplemented, modified or waived, would otherwise satisfy the requirements set forth in such paragraph (h) as if it were incurred by such Primary Obligor on the date of such amendment, extension, supplement, modification or waiver.

21.18 Distributions

The Primary Obligors shall not make or agree to make any Distribution unless:

(a) no Default has occurred or would result from such Distribution; and

(b) the Primary Obligors have delivered a Compliance Certificate evidencing that the LTM Leverage Ratio was not more than 1.0:1.0 for the two consecutive Test Periods immediately preceding the proposed Distribution, and evidencing that after making such Distribution, the financial covenants set out in Clause 20 (*Financial Covenants*) for the most recent Test Period then ended will continue to be complied with on a Pro Forma Basis.

21.19 Books and records

Each Primary Obligor shall maintain its books and records in accordance with good business practice adopted by companies in a similar industry to such Primary Obligor in their locality and applicable laws and regulations.

21.20 Access to properties

Each Primary Obligor shall, upon the reasonable written request of a Finance Party (not more than once in every Financial Year and at a cost to the Primary Obligor not exceeding the Approved Currency Equivalent of US$5,000 per inspection, unless an Event of Default is continuing) permit the Facility Agent and/or accountants or other professional advisers and delegates of the Facility

Agent free access at all reasonable times and on reasonable written notice to the premises, assets, books, accounts, records, and with the prior written consent from the relevant Primary Obligor (such consent not to be unreasonably withheld or delayed), the senior management employees of such Primary Obligor.

21.21 Arm's length basis

Except as permitted by the terms of the Finance Documents, no Primary Obligor shall enter into any transaction with any person other than any member of the Group except on arm's length terms and for full market value.

21.22 No guarantees or indemnities

(a) Except as permitted under paragraph (b) below, no Primary Obligor shall incur or allow to remain outstanding any guarantee or indemnity in respect of any obligation of any person.

(b) Paragraph (a) does not apply to a Permitted Guarantee.

21.23 Preservation of assets

Each Primary Obligor shall maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the reasonable opinion of such Primary Obligor in the conduct of its business.

21.24 Share issuance

No Primary Obligor shall, and shall procure that none of their Subsidiaries shall, issue or transfer any shares except pursuant to a Permitted Share Transaction.

21.25 Amendments to constitutional documents

The Primary Obligors shall not amend, vary, supplement or supersede any term of its respective memorandum or articles of association (or equivalent constitutional documents) in any manner which could reasonably be expected to have a Material Adverse Effect.

21.26 Management Fees

Each Primary Obligor shall ensure that:

(a) there is no material change on the basis (including without limitation, frequency, calculation method and magnitude) on which it calculates and pays, or is required to calculate and pay, Management Fees (determined by reference to the Signing Date in the case of a Borrower or the date of the relevant Accession Letter in the case of a New Primary Obligor); and

(b) the payment of Management Fees by it shall at all times be based on, and made on, an actual cost reimbursement basis, as aggregated among all Primary Obligors.

21.27 Permitted Debt Purchase Transactions

No Primary Obligor shall, and shall procure that neither the Guarantor nor any of the Guarantor's Subsidiaries or Affiliates shall, (i) enter into any Debt Purchase Transaction or (ii) be a Lender to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of Debt Purchase Transaction.

21.28 Further assurance

(a) Subject to paragraph (b) of this Clause 21.28:

(i) each Primary Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)) in order to:

(A) perfect or protect the Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security constituted by the Security Documents) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law; and/or

(B) facilitate the realisation of the assets which are, or are intended to be, the subject of the Security constituted by the Security Documents,

in accordance with, and subject to the Agreed Security Principles.

(ii) Each Primary Obligor shall (at the request of the Security Agent) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents, in accordance with, and subject to the Agreed Security Principles.

(b) Paragraph (a) of this Clause 21.28 shall not bind the Australian Dollar Borrower or any other Obligor which is incorporated or registered under the Corporations Act 2001 (Australia) to the extent they involve a charge or mortgage or an agreement to give or execute a charge or mortgage for the purposes of that Act or the Duties Act 1997 (NSW) but Clause 22.3 (*Other obligations*) will apply to them and be interpreted as if this paragraph (b) is of no effect.

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 is an Event of Default (save for Clause 22.17 (*Acceleration*)).

22.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) payment is made within five (5) Business Days of its due date.

22.2 Financial covenants and other obligations

(a) Any requirement of Clause 20 (*Financial covenants*) is not satisfied or an Obligor does not comply with the provisions of Clause 19.1 (*Financial Statements*), 19.2 (*Compliance Certificate*), 19.3 (*Requirements as to Financial Statements*), 19.4 (*Budgets*), or Clause 19.7 (*Notification of default*).

(b) An Obligor does not comply with any provision of any Security Document.

22.3 Other obligations

(a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*) and Clause 22.2 (*Financial covenants and other obligations*)).

(b) No Event of Default under paragraph (a) will occur if the failure to comply is capable of remedy and is remedied within thirty (30) days of the earlier of (A) the Facility Agent giving notice to the relevant Obligor and (B) the Obligor becoming actually aware of the failure to comply.

22.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

22.5 Cross default

(a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

(c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).

(d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

(e) No Event of Default will occur under this Clause 22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US$10,000,000 (or the Approved Currency Equivalent) in respect of the Primary Obligors collectively on an aggregate basis and US$25,000,000 (or the Approved Currency Equivalent) in respect of the Guarantor.

22.6 Insolvency

(a) Any Obligor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any Obligor.

22.7 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

(a) the suspension of payments, a moratorium of any indebtedness, winding-up, liquidation, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor;

(b) a composition, compromise, assignment or arrangement with any creditor of any Obligor;

(c) the appointment of a liquidator, receiver, administrative receiver, administrator, receiver and manager, provisional liquidator, compulsory manager or other similar officer in respect of any Obligor or any of its assets; or

(d) enforcement of any Security, or attachment, sequestration, distress or execution, in each case, over any assets comprising the Transaction Security,

or any analogous procedure or step is taken in any jurisdiction.

This Clause 22.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within forty-five (45) days of commencement.

22.8 Litigation

(a) Any litigation, arbitration, administrative, governmental, regulatory or similar proceedings are commenced in relation to any of the Finance Documents or the transactions contemplated therein (other than by the Finance Parties) or any Obligor which are reasonably likely to be adversely determined and if so determined would be reasonably likely to have a Material Adverse Effect.

(b) This Clause 22.8 shall not apply to any proceedings which are frivolous or vexatious and are discharged, stayed or dismissed with 45 days of commencement.

22.9 Judgments

There are any outstanding final judgments or decrees entered against (a) a Primary Obligor which, when aggregated with any other outstanding final judgments or decrees against such Primary Obligor or any other Primary Obligor, are in excess of US$10,000,000 (or its Approved Currency Equivalent); or (b) the Guarantor, when aggregated with any other outstanding final judgments or decrees against the Guarantor are in excess of US$25,000,000 (or its Approved Currency Equivalent), (in each case, to the extent not covered by independent third-party insurance and if insurance coverage is claimed, the relevant Obligor delivers a certificate signed by an authorized director of such Obligor certifying that such Obligor reasonably believes that the judgment or order is covered by insurance and that the relevant insurer will pay such amounts in due course) and that in each case, it has not been discharged within thirty (30) days after its entry.

22.10 Unlawfulness and Invalidity

(a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

(b) Any Transaction Security ceases to be effective or fails to provide the Lenders with the priority intended to be granted thereby.

(c) Any sharing of security or subordination created under the Finance Documents is or becomes unlawful.

(d) Any material obligation of an Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.

22.11 Repudiation and rescission of agreements

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

22.12 Material adverse change

Any event or series of events or circumstances occurs which the Majority Lenders, judging in good faith, reasonably believe has or is reasonably likely to have a Material Adverse Effect and is not remedied to the satisfaction of the Facility Agent within thirty (30) days of the occurrence of such event or circumstance.

22.13 Auditor's report

The auditors qualify their report to any audited financial statements of any member of the Asia-Pacific Group and that qualification is, in the opinion of the Lenders, reasonably likely to have a Material Adverse Effect.

22.14 Expropriation

The authority or ability of any Obligor to conduct its business is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, condemnation, restriction or other action by or on behalf of any governmental, regulatory or other authority or person in relation to any Obligor or any of their assets and such action has, in the reasonable opinion of the Lenders, a Material Adverse Effect and such curtailment is not remedied within twenty one (21) days of such seizure, expropriation, nationalisation, intervention, condemnation, restriction or other action.

22.15 Cessation or change of business

There is any change in the business of any Obligor from that carried on at the Signing Date which is, in the opinion of the Lenders, reasonably likely to have a Material Adverse Effect.

22.16 Intercreditor Agreement

(a) Any party to the Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement save where such non-compliance (other than with respect to obligations affecting ranking or subordination of liabilities or security) would not be reasonably be expected to have a Material Adverse Effect; or

(b) a representation or warranty given by a party in the Intercreditor Agreement is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, are not remedied within ten (10) days of earlier of the Facility Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

22.17 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing, the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Administrative Borrower:

(a) cancel the Total Commitments whereupon they shall immediately be cancelled;

(b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

(c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or

(d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents or under law (which are, in each case, available to be taken after or concurrently with the issuance of such notice).

SECTION 8
CHANGES TO PARTIES

23. CHANGES TO THE LENDERS

23.1 Assignments and transfers by the Lenders

Subject to this Clause 23, a Lender (the "**Existing Lender**") may:

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

in either case, (i) to an Eligible Assignee without the consent of any person; or (ii) subject to consent of the Administrative Borrower, to any of its Affiliates (as this defined term is used in this Clause 23.1, taking into account the language in parenthesis in paragraph (b) of the definition of "**Subsidiary**"), (the "**New Lender**"), including, without limitation, rights and/or obligations with respect to one or more Borrowers.

23.2 Conditions of assignment or transfer

(a) An assignment will only be effective on:

(i) delivery of written notification of such assignment to the Administrative Borrower;

(ii) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have had if it was an Existing Lender;

(iii) performance by the Facility Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.

(b) A transfer will only be effective if the procedure set out in Clause 23.4 (*Procedure for transfer*) is complied with.

(c) If:

(i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents and such assignment or transfer is effective or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Borrower would be obliged to make a

payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

(d) Following the Syndication Closing Date, an assignment or transfer of part of a Lender's participation must be in an amount greater than US$2,000,000 (or the Approved Currency Equivalent) (or if less, the remaining balance of the Existing Lender's existing Commitment).

(e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

23.3 Limitation of responsibility of Existing Lenders

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;

(ii) the financial condition of any Obligor;

(iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document or the Transaction Security; and

(ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

(i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

23.4 Procedure for transfer

(a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

(b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

(c) On the Transfer Date:

(i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security the Existing Lender shall be released from further obligations towards the Borrowers (and vice versa) under the Finance Documents and in

respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");

(ii) each of the Borrowers and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Borrower and the New Lender have assumed and/or acquired the same in place of that Borrower and the Existing Lender;

(iii) the Facility Agent, the Security Agent, the JMLAs, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the JMLAs and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Lender shall become a Party as a "Lender" and a "Finance Party" for the purposes of the Finance Documents.

23.5 Procedure for assignment

(a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

(b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

(c) On the Transfer Date:

(i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(iii) the New Lender shall become a Party as a "Lender" and a "Finance Party" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Lenders may utilise procedures other than those set out in this Clause 23.5 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 23.4 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*).

23.6 Copy of Transfer Certificate or Assignment Agreement to Administrative Borrower

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Administrative Borrower a copy of that Transfer Certificate or Assignment Agreement.

23.7 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without notifying, consulting with, or obtaining consent from, any Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

(a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

(b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

(i) release a Lender from any of its obligations under the Finance Documents or (other than upon enforcement by the beneficiary of such charge, assignment or security) substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

(ii) require any payments to be made by a Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

24. CHANGES TO THE OBLIGORS

24.1 Assignments and transfer by Obligors

Without prior written consent of the Lenders, no Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

24.2 New Primary Obligors

(a) Any companies required to accede to this agreement in accordance with paragraph (d) of the definition of "Permitted Business Acquisition", or Clause 21.7 (*New Affiliates*), shall do so in accordance with paragraph (c) below.

(b) Without prejudice to paragraph (a) above, any Primary Obligor may request that any Subsidiary or Affiliate becomes a Primary Obligor (a "**Voluntary Accession**"), in which case it shall do so in accordance with paragraph (c) below.

(c) A Subsidiary or Affiliate of a Borrower may only accede to this Agreement as a Primary Obligor (a "**New Primary Obligor**") if:

(i) the Administrative Borrower complies with the provisions of paragraphs (c) and (d) of Clause 19.9 ("*Know your customer*" *checks*) with respect to such proposed New Primary Obligor;

(ii) with respect to a Voluntary Accession only, such proposed New Primary Obligor is incorporated in a Qualifying Jurisdiction;

(iii) such proposed New Primary Obligor enters into Security Documents and grants Transaction Security in accordance with, and subject to, the Agreed Security Principles, and accedes to the Intercreditor Agreement in accordance with the terms thereof;

(iv) the Administrative Borrower delivers to the Facility Agent a duly completed and executed Accession Letter with respect to such proposed New Primary Obligor;

(v) the Administrative Borrower confirms that no Default is continuing or would occur as a result of that Subsidiary or Affiliate becoming a Primary Obligor, and has provided a Compliance Certificate certifying compliance with the financial covenants in Clause 20.2 (*Financial Covenants*) for the most recent Test Period then ended on a Pro Forma Basis;

(vi) the Facility Agent has received all of the documents and other evidence listed in Part II of Schedule 5 (*Conditions precedent*) in relation to such proposed New Primary Obligor; and each in form and substance satisfactory to the Facility Agent, and pursuant to which the assets of such proposed New Primary Obligor are added to and form part of the Secured Property; and

(vii) the immediate Holding Company or Holding Companies of such proposed New Primary Obligor shall satisfy its obligations under Clause 21.28(a) (*Further Assurance*) with respect to the Shares of such New Primary Obligor.

(d) The Facility Agent shall notify the Administrative Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 5 (*Conditions precedent*) including, without limitation, customary legal opinions in form and substance reasonably satisfactory to the Facility Agent in respect of the New Primary Obligor, its Obligations and any new Transaction Security.

24.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant proposed New Primary Obligor that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

SECTION 9
THE FINANCE PARTIES

25. ROLE OF THE FACILITY AGENT AND THE JMLAS

25.1 Appointment of the Facility Agent

(a) Each other Finance Party appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.

(b) Each other Finance Party authorises the Facility Agent to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

25.2 Duties of the Facility Agent

(a) Subject to paragraph (b) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.

(b) Without prejudice to Clause 23.6 (*Copy of Transfer Certificate or Assignment Agreement to Administrative Borrower*), paragraph (a) above shall not apply to any Transfer Certificate or to any Assignment Agreement.

(c) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(d) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.

(e) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than itself, the Security Agent or the JMLAs) under this Agreement it shall promptly notify the other Finance Parties.

(f) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

25.3 Role of the JMLAs

Except as specifically provided in the Finance Documents, the JMLAs have no obligations of any kind to any other Party under or in connection with any Finance Document.

25.4 No fiduciary duties

(a) Nothing in this Agreement constitutes the Facility Agent or the JMLAs as a trustee or fiduciary of any other person.

(b) Neither the Facility Agent nor the JMLAs shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

25.5 Business with the Group

The Facility Agent and the JMLAs may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

25.6 Rights and discretions of the Facility Agent

(a) The Facility Agent may rely on:

(i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

(ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

(b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non-payment*));

(ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and

(iii) any notice or request made by the Administrative Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Facility Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

(d) The Facility Agent may act in relation to the Finance Documents through its personnel and agents.

(e) The Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the JMLAs are obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

25.7 Majority Lenders' instructions

(a) Unless a contrary indication appears in a Finance Document, the Facility Agent shall (i) exercise any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Facility Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

(b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.

(c) The Facility Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability which it may incur in complying with the instructions.

(d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Facility Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

(e) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or the Security Documents.

25.8 Responsibility for documentation

Neither the Facility Agent nor the JMLAs:

(a) are responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent, the JMLAs, an Obligor or any other person given in or in connection with any Finance Document or the Information Memorandum; or

(b) are responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security.

25.9 Exclusion of liability

(a) Without limiting paragraph (b) below, the Facility Agent will not be liable for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.

(b) No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent may rely on this Clause.

(c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Facility Agent or the JMLAs to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Facility Agent and the JMLAs that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the JMLAs.

25.10 Lenders' indemnity to the Facility Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).

25.11 Resignation of the Facility Agent

(a) The Facility Agent may resign and appoint one of its Affiliates acting through an office in Hong Kong or Singapore as successor by giving notice to the other Finance Parties and the Administrative Borrower.

(b) Alternatively the Facility Agent may resign by giving thirty (30) days' notice to the other Finance Parties and the Administrative Borrower, in which case the Majority Lenders (after consultation with the Administrative Borrower) may appoint a successor Facility Agent.

(c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring Facility Agent (after consultation with the Administrative Borrower) may appoint a successor Facility Agent.

(d) The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(e) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.

(f) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 25. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(g) After consultation with the Administrative Borrower, the Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above.

25.12 Confidentiality

(a) In acting as agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.

25.13 Relationship with the Lenders

(a) The Facility Agent may treat each Lender as a Lender, entitled to payments under any Finance Documents and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

(b) Each Lender shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent.

(c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 30.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 30.2 (*Addresses*) and paragraph (a)(iii) of Clause 30.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

25.14 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Facility Agent and the JMLAs that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) the financial condition, status and nature of each member of the Group;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

(c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(d) the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Facility Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Secured Property, the priority of any of the Transaction Security or the existence of any Security affecting the Secured Property.

25.15 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall (in consultation with the Administrative Borrower) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

25.16 Facility Agent's Management Time

Any amount payable to the Facility Agent under Clause 15.3 (*Indemnity to the Facility Agent*), Clause 17 (*Costs and expenses*) and Clause 25.10 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources in relation to duties undertaken which are of an exceptional nature or outside the scope of its normal activities (including any costs incurred under Clause 17.2 (*Amendment Costs*) and 17.3 (*Enforcement Costs*)) and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Administrative Borrower and the Lenders, and is in addition to any fee paid or payable to the Facility Agent under Clause 12 (*Fees*).

25.17 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the

amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

25.18 Administrative Borrower as agent for the Primary Obligors

(a) Each Primary Obligor, hereby irrevocably appoints Equinix Singapore as the borrowing agent and attorney-in-fact for each Primary Obligor which appointment shall remain in full force and effect unless and until the Facility Agent shall have received prior written notice signed by all of the Primary Obligors that such appointment has been revoked and that another Primary Obligor has been appointed as Administrative Borrower. Each Primary Obligor hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide to the Facility Agent and receive from the Facility Agent all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Finance Documents (and any requirement under this Agreement or any other Finance Document to deliver notice to a Primary Obligor or the Primary Obligors shall be deemed satisfied if delivered to the Administrative Borrower) and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Finance Documents.

(b) The Facility Agent and each Lender shall be entitled to rely conclusively on the Administrative Borrower's authority to deliver on behalf of the Primary Obligors all documents, notices, requests or certificates required under or in connection with this Agreement until the Facility Agent receives written notice to the contrary in accordance with paragraph (a) above. The Primary Obligors hereby acknowledge and agree that the Facility Agent and each Lender may conclusively rely on any and all documents, notices, requests or certificates executed and delivered by the Administrative Borrower as if such notices, requests or certificates were executed and delivered by an authorized officer of the relevant Primary Obligor.

26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

27. SHARING AMONG THE FINANCE PARTIES

27.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 28 (*Payment mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

(a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Facility Agent;

(b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.6 (*Partial payments*),

27.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 28.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

27.3 Recovering Finance Party's rights

On a distribution by the Facility Agent under Clause 27.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

27.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

(a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and

(b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

27.5 Exceptions

(a) This Clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified that other Finance Party of the legal or arbitration proceedings; and

(ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

28. PAYMENT MECHANICS

28.1 Payments to the Facility Agent

(a) On each date on which a Borrower or a Lender is required to make a payment under a Finance Document, that Borrower or Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Facility Agent specifies.

28.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to a Borrower*) and Clause 28.5 (*Clawback*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

28.3 Distributions to a Borrower

The Facility Agent may (with the consent of the Borrower or in accordance with Clause 29 (*Set-off*)) apply any amount received by it for that Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

28.4 Pro Rata Treatment

(a) Each payment by a Borrower of interest in respect of any Loan shall be applied to the amounts of such obligations owing to the Lenders holding such Loan pro rata according to the respective amounts then due and owing to such Lenders.

(b) Each payment by a Borrower on account of principal:

(i) of an Australian Dollar Loan shall be allocated among the Australian Dollar Lenders pro rata based on the principal amount of such Australian Dollar Loan held by the Australian Dollar Lenders;

(ii) of a HK Dollar Loan shall be allocated among the HK Dollar Lenders pro rata based on the principal amount of such HK Dollar Loan held by the HK Dollar Lenders;

(iii) of a Singapore Dollar Loan shall be allocated among the Singapore Dollar Lenders pro rata based on the principal amount of such Singapore Dollar Loan held by the Singapore Dollar Lenders; and

(iv) of a Yen Loan shall be allocated among the Yen Lenders pro rata based on the principal amount of such Yen Loan held by the Yen Lenders.

(c) Where a Borrower is obliged to make a payment pro rata in respect of Loans denominated in more than one currency, such pro rata payment shall be determined by reference to the US Dollar Equivalent of each of the relevant Loans.

28.5 Clawback

(a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

28.6 Partial payments

(a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the intended Loan in the following order:

(i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Facility Agent and the Security Agent under the Finance Documents;

(ii) **secondly**, in or towards payment of any accrued interest, fee or commission due but unpaid under this Agreement or any other

Finance Document, rateably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;

(iii) **thirdly**, in or towards payment of any principal due but unpaid under this Agreement or any other Finance Document, rateably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties; and

(iv) **fourthly**, in or towards payment of any other sum due but unpaid under the Finance Documents, rateably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties.

(b) Paragraph (a) above will override any appropriation made by an Obligor.

28.7 No set-off by Borrowers

All payments to be made by a Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

28.8 Borrower Default

Unless the Facility Agent shall have received notice from the Administrative Borrower prior to the date on which any payment is due to the Facility Agent for the account of the Lenders hereunder that such Borrower will not make such payment, the Facility Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Facility Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Facility Agent, at the rate determined by the Facility Agent in accordance with banking industry rules on interbank compensation.

28.9 Business Days

(a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

28.10 Currency of account

(a) Subject to paragraphs (b) to (e) below, the currency of account and payment for any sum due from an Obligor under any Finance Document is US Dollars.

(b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the Approved Currency in which that Loan or Unpaid Sum is denominated on its due date.

(c) Each payment of interest and all fees (including the upfront fee under Clause 12.1 (*Upfront fee*) and Clause 12.2 (*Commitment fee*) shall be made in the Approved Currency in which the sum in respect of which the interest or fee is payable was denominated when that interest or fee was calculated.

(d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

(e) Any amount expressed to be payable in a currency other than US Dollars shall be paid in that other currency.

28.11 Change of currency

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Administrative Borrower); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Administrative Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

29. SET-OFF

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

30. NOTICES

30.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

30.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is as follows:

(i) if to Equinix Australia, Equinix HK, Equinix Singapore, Equinix Pacific or Equinix Japan, to:

9 Temasek Boulevard #17-02
Suntec Tower Two Singapore 038989
Attention: General Counsel
Tel No.: +65 6622 0100
Fax: +65 6820 2005

with a copy to:

Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: General Counsel
Fax: +1 650 513 7913

(ii) if to the Facility Agent, to it at:

The Royal Bank of Scotland N.V.
One George Street
Tower B 10/F
Singapore 049145
Attention: Jessica Goh, Chew Yann Leng, Agency Asia
Fax: +65 65173426

(iii) if to DBS, to it at:

DBS Bank Ltd.
6 Shenton Way, #38-00
DBS Building Tower One
Singapore 068809
Attention: Boey Yin Chong/Marcus Poon
Fax: +65 63236353

(iv) if to ING, to it at:

ING Bank N.V., Singapore Branch
9 Raffles Place #19-02
Republic Plaza
Singapore 048619
Attention: Krishna Suryanarayanan/Edward Lim
Fax: +65 6535 1195

(v) if to RBS, to it at:

The Royal Bank of Scotland N.V.
Global Banking & Markets
29/F, AIA Central, 1 Connaught Road Central
Hong Kong
Attention: Shallu Arora/Josephine Chan
Fax: +852 3961 3048/ +852 3961 3149

(vi) if to GE, to it at:

GE Commercial Finance (Hong Kong) Ltd.
18/F The Lee Gardens
33 Hysan Avenue
Attention: Boyce Tsui, Operations Manager
Foster Lee, Associate Director
Fax: +852 2100 6773

(vii) in the case of each Lender, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party,

or any substitute address or fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five (5) Business Days' notice.

30.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Facility Agent or the Security Agent will be effective only when actually received by the Facility Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Facility Agent's or Security Agent's signature below (or any substitute department or officer as the Facility Agent or Security Agent shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the Facility Agent.

(d) Any communication or document made or delivered to an Obligor in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

30.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 30.2 (*Addresses*) and/or clause 18.4 (*Addresses*) of the Intercreditor Agreement, or changing its own address or fax number, the Facility Agent shall notify the other Parties hereto and all other parties to the Intercreditor Agreement, from time to time.

30.5 Electronic communication

(a) Any communication to be made between the Facility Agent or the Security Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Facility Agent, the Security Agent and the relevant Lender:

(i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(iii) notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Facility Agent or the Security Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.

30.6 English language

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Facility Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

31. CALCULATIONS AND CERTIFICATES

31.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

31.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

32. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

34. AMENDMENTS AND WAIVERS

34.1 Required consents

(a) Subject to Clause 34.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligor(s) party to such Finance Document and any such amendment or waiver will be binding on all Parties.

(b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

34.2 Exceptions

(a) An amendment or waiver of any Finance Document that has the effect of changing or which relates to:

(i) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);

(ii) an extension to the date of payment of any amount under the Finance Documents;

(iii) a reduction in the Applicable Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

(iv) a change in currency of payment of any amount under the Finance Documents;

(v) an increase in or an extension of any Commitment;

(vi) a change to the Obligors;

(vii) the change in nature or scope, or release of the US Guarantee or any Transaction Security;

(viii) the order of priority or subordination under the applicable Finance Documents or the order in which the proceeds of enforcement of the Security created under the Security Documents are distributed (except insofar as it relates to a sale or disposal of an asset which is the subject of the Security created under the Security Documents where such sale, or disposal is expressly permitted under this Agreement or any other Finance Document);

(ix) any provision which expressly requires the consent of all the Lenders; or

(x) Clause 2.2 (O*bligations and Representations*), Clause 23 (*Changes to the Lenders*) or this Clause 34,

shall not be made without the prior consent of (A) all the Lenders and (B) with respect to sub-paragraphs (vii) and (viii) above only, the Qualifying Hedge Counterparties (if any).

(b) An amendment or waiver which relates to the rights or obligations of the Facility Agent, the Security Agent, a Qualifying Hedge Counterparty or the JMLAs (each in their capacity as such) may not be effected without the consent of the Facility Agent, the Security Agent, such Qualifying Hedge Counterparty or, as the case may be, the JMLAs.

35. CONFIDENTIALITY

35.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 35.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

35.2 Disclosure of Confidential Information

Any Finance Party may disclose:

(a) to any of its Affiliates (as this defined term is used in this Clause 35, taking into account the language in parenthesis in paragraph (b) of the definition of "Subsidiary") and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall

be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Borrowers and to any of that person's Affiliates, Representatives and professional advisers;

(iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 25.13 (*Relationship with the Lenders*));

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.7 (*Security over Lenders' rights*);

(vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(viii) who is a Party; or

(ix) with the consent of the Borrowers;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

(A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

(C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

(c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Obligors and the relevant Finance Party;

(d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to

whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information;

(e) to any investor or potential investor in a securitisation (or similar transaction of broadly equivalent economic effect) of a Lender's rights or obligations under the Finance Documents, the size and term of the Facilities and the identity of each of the Obligors; and

(f) following launch of general syndication, in any advertisements, customer pitches or marketing materials, in the form of customary tombstones and/or deal briefs (which may include any Obligor's logo) in respect of the Facilities.

35.3 Entire agreement

This Clause 35 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

35.4 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

35.5 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Obligors:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 35.2 (*Disclosure of Confidential Information*) to the extent legally permissible except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 35.

35.6 Continuing obligations

The obligations in this Clause 35 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) Months from the earlier of:

(a) the date on which all amounts payable by the Borrowers under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

35.7 Singapore Banking Act

Notwithstanding the foregoing provisions of this Clause 35, each Singapore Dollar Borrower hereby irrevocably and unconditionally consents and authorises each Finance Party to furnish, disclose, divulge and reveal any and all information in relation to such Singapore Dollar Borrower, its personal particulars and all other information relating to its account, credit standing, financial position and all other information of whatsoever nature pertaining to such Singapore Dollar Borrower, including any customer information (as defined in the Banking Act, Chapter 19 of the laws of Singapore (the "**Act**")) relating to such Singapore Dollar Borrower as any Finance Party shall consider appropriate to:

(a) any of the Finance Parties' servants, agents for the purposes of inter alia, credit appraisal, review by and/or reporting to that Finance Party's head office, regional office or any of its branches, subsidiaries and affiliated companies; or

(b) any person to whom disclosure is permitted or required by law; or

(c) any person to whom a Lender assigns or transfers (or may potentially assign or transfer) all or part of its rights and/or obligations under this agreement; or

(d) any surety or any governmental or regulatory authorities or law wherever situated for any purpose whatsoever.

It is hereby agreed that each Finance Party and any of the Finance Parties' officers may disclose the foregoing information to the fullest extent permitted by the Act or any other statutory provision or law.

36. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 11
GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW

This Agreement, and any non-contractual obligations arising out of or in connection with it, are governed by English law.

38. ENFORCEMENT

38.1 Jurisdiction

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement (a "**Dispute**").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) This Clause 38.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

38.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Primary Obligor:

(a) irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London EC2V 7EX, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

(b) agrees that failure by a process agent to notify the Administrative Borrower of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Executed in accordance with section 127
Of the Corporations Act 2001 by

EQUINIX AUSTRALIA PTY. LIMITED

By: /s/
Name:
Title:

By: /s/
Name:
Title:

EQUINIX HONG KONG LIMITED

By: /s/
Name:
Title:

EQUINIX SINGAPORE PTE. LTD.

By: /s/
Name:
Title:

EQUINIX PACIFIC PTE. LTD.

By: /s/
Name:
Title:

EQUINIX JAPAN K.K.

By: /s/
Name:
Title:

THE ROYAL BANK OF SCOTLAND N.V., as Facility Agent

By: /s/
Name:
Title:

By: /s/
Name:
Title:

DBS BANK LTD., as Joint Mandated Lead Arranger and Joint Mandated Bookrunner

By: /s/
Name:
Title:

By: /s/
Name:
Title:

ING BANK N.V., SINGAPORE BRANCH as Joint Mandated Lead Arranger and Joint Mandated Bookrunner

By: /s/
Name:
Title:

By: /s/
Name:
Title:

THE ROYAL BANK OF SCOTLAND N.V., as Joint Mandated Lead Arranger and Joint Mandated Bookrunner

By: /s/
Name:
Title:

By: /s/
Name:
Title:

GE COMMERCIAL FINANCE (HONG KONG) LTD., as Joint Mandated Lead Arranger and Joint Mandated Bookrunner

By: /s/
Name:
Title:

By: /s/
Name:
Title:

DBS BANK LTD., as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

DBS BANK LTD., TOKYO BRANCH as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

ING BANK N.V., HONG KONG BRANCH as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

ING BANK N.V., SINGAPORE BRANCH as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

ING BANK N.V., TOKYO BRANCH as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

THE ROYAL BANK OF SCOTLAND PLC, as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

THE ROYAL BANK OF SCOTLAND N.V., as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

GE CAPITAL FINANCE PTY LTD (as trustee for GE Capital Commercial Real Estate Financing & Services (Australia) Unit Trust), as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

GE COMMERCIAL FINANCE (HONG KONG) LTD, as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

GE CAPITAL SERVICES PTE LTD, as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

GE CAPITAL ASSET FINANCE CORPORATION, as a Lender

By: /s/
Name:
Title:

By: /s/
Name:
Title:

*Note: English translation of French version.

(1) DIGITAL REALTY (PARIS 2) SCI

(2) EQUINIX PARIS SAS

AMENDMENT N°1 TO COMMERCIAL LEASE

DATED 30 SEPTEMBER 2008

AMENDMENT N°1 TO COMMERCIAL LEASE

BETWEEN:

DIGITAL REALTY (Paris 2) SCI, a French simplified private limited Company for property purposes (*société civile immobilière*) with a share capital of € 866,000.00, having its registered office at 52, rue de la Victoire, 75009 Paris, registered with the Paris Trade and Companies Register under number 492 802 947, represented by Bernard Geoghegan, its co-*gérant*, duly empowered for the purposes hereof.

Hereinafter referred to as the "**Landlord**",

Party of the first part,

AND

EQUINIX PARIS SAS, a French simplified limited company (*société par actions simplifiée*) with a share capital of € 37.000,00, having its registered office at Roissy-en-France (95700) 167 rue de la Belle Etoile –Parc d'Activité Paris Nord, registered with the Pontoise Trade and Companies Register under number 508 444 551, represented by Michel Brignano as *Directeur Général*, duly empowered for the purposes hereof;

Hereinafter referred to as the "**Tenant**",

Party of the second part,

The Landlord and the Tenant shall hereinafter be referred to individually as a "**Party**" and together as the "**Parties**".

RECITALS

By a Commercial Lease dated September 30, 2008 (the "**Lease**"), Landlord granted a commercial lease to Tenant over certain premises (as more particularly described in the Lease, the "**Original Leased Premises**") located at 114 rue Ambroise Croizat, 93220 Saint-Denis (the "**Building**").

All capitalized terms not specifically defined in this Amendment (defined below) shall have the same meaning attributed to them in the Lease.

Subsequent to the signing of the Lease, the Parties have elected to expand the Original Leased Premises, to increase the Electricity Consumption Threshold and to make several other amendments to the Lease, and the Parties have therefor agreed to enter into this Amendment N°1 to the Lease (this "**Amendment**") in order to make the appropriate modifications to the Lease.

Any reference included herein to a "**Recital**", an "**Article"** or an "**Annex"** shall be deemed to be a reference to the recitals, an article or annex of this Amendment, except when otherwise specified.

Now, therefore, the Parties agree as follows:

ARTICLE 1: LEASED PREMISES

A. EXPANSION OF LEASED PREMISES. Commencing on 1 July 2010 (hereinafter the "**1A Commencement Date**"), the Landlord hereby grants to the Tenant, which irrevocably accepts, a commercial lease over the following premises located within the Property, of a total rental area of approximately ***2,861*** square meters, comprised of (hereinafter the "**1A Additional Premises**"):

(i) premises reserved for business activities, datacenter activities, storage, technical premises and office areas, located on the ground floor of the Building, demarcated on the plan included in **Annex 2A**, and listed in Annex 2B, corresponding to a total rental space of approximately***1,886*** square meters and the technical and areas of common use, the latter being comprised of one high voltage electricity distribution area with a delivering capacity of 3 Mva (demarcated in the plans attached hereto as **Annex 2A**, as "**G2 and G3 Areas**");

(ii) premises reserved for business activities, storage, technical premises, datacenter activities, and in particular office areas (subject for the Tenant, at Tenant's sole cost and responsibility, to perform and obtain any and all prior administrative authorizations relating thereto, with the support, where appropriate, of the Landlord), located in a mezzanine in the Building situated above a portion of the 1A Additional Premises, demarcated on the plan included in **Annex 2A**, and listed in Annex 2B, corresponding to a total rental space of approximately ***975*** square meters and the technical and areas of common use, (demarcated in the plans attached hereto as **Annex 2A**, as "**F1, F2, F3 and F5 Areas**");

As defined therein, items (i) and (ii) above are collectively referred to as the '**POD4 Area**".

(iii) subject to the terms of the Lease, including without limitation Articles 11.2.2, 11.16.1, 11.16.3, 11.16.4 (as amended by Article 6 below) and 15.2.1, the right to install equipment on the roof of the Leased Premises in the location demarcated on the plan included in **Annex 2A** using the existing support structure therefor; and

(iv) subject to the terms of the Lease, including without limitation Articles 11.2.2., 11.16.1, 11.16.3, 11.16.4 (as amended by Article 8 below) and 15.2.1, the right to use the two 20,000 litre fuel underground storage tanks located outside of the Building in approximately the location shown on **Annex 2A** (the "**1A Fuel Tanks**"). The 1A Fuel Tanks will be handed over totally empty by Landlord, on the 1A Commencement Date.

B. AMENDED DESCRIPTION OF LEASED PREMISES. Accordingly, effective as of the 1A Commencement Date, the description of the total Leased Premises under the Lease, as amended hereby, will be as follows (and as summarized in **Annex 2B** attached hereto), it being reminded by the Parties that Tenant has been occupying in the Building and in agreement with Landlord, under the terms and conditions of the Lease, prior to this Amendment, the areas (collectively refereed to herein as "**PA3 Area**") demarcated on the plans included in **Annex 2A** to this Amendment, as G4 and F4 areas.

(i) The first (1st) five (5) paragraphs of Article 1.1 of the Lease are hereby amended in their entirety to read as follows:

1. LEASE – DESCRIPTION

1.1. The Landlord hereby grants to the Tenant, which irrevocably accepts, a commercial lease over the following premises located within the Property, of a total area of approximately ***12,080 square meters***, comprised of (hereinafter the "**Leased Premises**"), it being specified that the Lease contained a mistake on the total surface area of the Leased Premises which is hereby rectified:

- premises reserved for business activities , storage, technical premises and datacenter activities as well as office areas, located on the ground floor of the Building, demarcated on the plans included in **Annex 2A**, and listed in Annex 2B, corresponding to a total rental space of***9,375 square meters*** and the technical and areas of common use, the latter being comprised of ***five*** high voltage electricity distribution areas, each with a delivering capacity of 3 Mva;
- premises reserved for business activities, storage, technical premises, datacenter activities, and in particular office areas (subject for the Tenant, at Tenant's sole cost and responsibility, to perform and obtain any and all prior administrative authorizations relating thereto, with the support, where applicable, of the Landlord), located in a mezzanine in the Building situated above a portion of the Leased Premises, demarcated on the plans included in **Annex 2A**, and listed in Annex 2B, corresponding to a total rental space of approximately***2,705 square meters*** and the technical and areas of common use ;
- the exclusive right to use and access the exterior areas demarcated on the plan included in**Annex 2A**, and listed in **Annex 2B**, for its installations and equipment;
- subject to the terms of the Lease, including without limitation Articles 11.2.2, 11.16.1, 11.16.3, 11.16.4 (as amended by Article 6 below) and 15.2.1, the right to install equipment on the roof of the Leased Premises in the location demarcated on the plan included in **Annex 2A** using the existing support structure therefor. The installation of such equipment shall be carried out at the sole expense, responsibility and risk of the Tenant subject to the prior written approval of the Landlord, approval which the Landlord may refuse only in the event that the Tenant fails to conform to the technical and safety rules applicable to the installation of such equipment. It is also specified that the use of the roof space by Tenant shall not interfere with Landlord's services running on the roof below the structure;

(ii) The following item is hereby added to Article 1.1 of the Lease:

- subject to the terms of the Lease, including without limitation Articles 11.2.2., 11.16.1, 11.16.3, 11.16.4 (as amended by Article 6 below) and 15.2.1, the right to use the two 20,000 litre fuel underground storage tanks located outside of the Building in approximately the location shown on **Annex 2A** (collectively, the "**1A Fuel Tanks**"). Landlord will deliver, and Tenant hereby accepts, the 1A Fuel Tanks totally empty and in their "AS IS" condition as of the 1A Commencement Date; and at the expiration or earlier termination of the term of this Lease, Tenant may surrender the 1A Fuel Tanks totally empty or, Landlord may accept, at his sole discretion and on Tenant's request, that Tenant surrenders the 1A Fuel Tanks to Landlord filled with their then current level of fuel, together with a certificate from an engineer reasonably acceptable to Landlord certifying the quality and grade of fuel therein. In addition, Landlord grants to Tenant the right to surrender the use of the 1A Fuel Tanks at any time during the Lease under the same above-mentioned conditions. In the event of surrender before termination of the Lease, Tenant shall send a letter to Landlord to organize a meeting for the formal surrender of the 1A Fuel Tanks. Such surrender will give lieu to the drawing up of a schedule of conditions executed by both Parties, it being expressly acknowledged and agreed by Landlord that Tenant will have no liability whatsoever with respect to such surrendered Fuel Tanks following the execution of such schedule of conditions. Landlord also grants to Tenant the option to install new fuel tanks with the same total capacity of 40,000 liters as mentioned above, on the premises, as a replacement of 1A Fuel Tanks, subject to the terms and conditions of the Lease and the Amendment, and in particular – but not limited to – the procedure stated under article 11.2.1 of the Lease, as amended hereby. In the event that Tenant were to install those new fuel tanks, it is agreed that Tenant will at the expiration or earlier termination of the term of this Lease surrender them in the same conditions as stated above for the 1A Fuel Tanks;

(iii) For the avoidance of doubt, except as expressly set forth in Article 1. B. (i) hereinafter, the Parties agree that the remainder of Article 1.1 of the Lease remains unchanged; and

(iv) **Annex 2** of the Lease is hereby deleted and replaced in its entirety by **Annex 2A** and **Annex 2B**, attached hereto, and all references in the Lease to **Annex 2** shall be deemed to be references to **Annex 2A** and **Annex 2B**, collectively.

C. EXTENSION OF INTENDED USE. Commencing on the 1A Commencement Date, Landlord agrees that the premises located at the mezzanine level may be used as office areas, subject for the Tenant, at Tenant's sole cost and responsibility, to perform and obtain any and all prior administrative authorizations relating thereto, with the support, where applicable, of the Landlord. Upon receipt of the relevant authorizations, Tenant shall immediately notify said authorization to the Landlord, together with a detailed and complete description of the fitting works to be performed. Landlord shall therefore, as per the terms of Article 11.2.1. of the Lease and other relevant provision of the Lease, as amended hereby, give its prior written consent to said works, Landlord's consent not to be unreasonably withheld.

D. TERMS FOR 1A ADDITIONAL PREMISES.

(i) A schedule of condition for the 1A Additional Premises shall be drawn up by both Parties as soon as possible after this Amendment has been signed. If a schedule of condition is not drawn up for any reason whatsoever, the 1A Additional Premises shall be deemed to have been handed over in perfect condition.

(ii) Notwithstanding clause (i) above, the Landlord shall perform and complete the Additional Installations as described under **Annex 3** at its sole cost and expense, and provide its best efforts to complete the Landlord's Installations at the earliest as from execution of the Amendment and no later than 30 June 2010. The Landlord agrees to communicate to the Tenant, as soon as possible from the signature of this Amendment, the specifications describing the Additional Installations and to allow the Tenant sufficient time to request any changes to the specifications, prior to the Landlord carrying out of such Additional Installations. The Tenant shall bear all incremental costs related to any change request and shall pay the same to the Landlord within thirty (30) days following receipt of an invoice form the Landlord. In the event that the Additional Installations are not completed by the Landlord by the 30 of June 2010, the Parties specifically agree that the Tenant will be permitted to complete such works in lieu of the Landlord, in accordance with the relevant agreed specifications, and in particular so as not to potentially delay access by the Tenant in the agreed premises.

(iii) The Tenant expressly exempts the Landlord from providing to the Tenant prior to the signing of this Amendment, any energy performance analysis of the 1A Additional Premises. The Tenant declares that it has such knowledge, and hereby waives any claim against the Landlord or the Landlord Group.

(iv) The Landlord has transmitted, prior to the signing of this Amendment, to the Tenant, who hereby acknowledges the receipt thereof, of an asbestos report dated 28 November 2007 of the Building, and appearing in **Annex 4** to the Lease. The Tenant hereby declares to have perfect knowledge of this

report, the 1A Additional Premises, and the Building, and assumes all responsibility and without recourse against the Landlord and the Landlord Group for the 1A Additional Premises and the Building, in this regard.

(v) In accordance with the terms of Articles L. 125-5 and R 125-26 of the Environmental Code (*Code de l'environnement*), Landlord has provided Tenant, who hereby acknowledges receipt of same, with an Environmental and Technological Risks Statement (*état des risques naturels et technologiques*), together with its annexes, in respect of the Building, established on the basis of the information provided to it by virtue of the ***Arrêté Préfectoral Number 2006-45-1 of February 14, 2006***, which statement is attached hereto as **Annex 5** (the "**Environmental and Technological Risks Statement**"). Landlord also informs Tenant that the Building has not been affected by any incident or disaster for which an indemnity is required to be paid pursuant to Article L 125-2 of the Environmental Code or Article L 128-2 of the Insurance Code.

(vi) Subject to the terms and conditions of this Clause D, the Landlord permits Tenant and other Tenant Parties (as defined in Article 11.16.3 of the Lease) to enter and occupy the 1A Additional Premises prior to the 1A Commencement Date ("**1A Early Access**"), for the purposes of inspecting same and for performing Tenant's fit-out work therein ("**1A Tenant Work**"), on and after the 1st of April 2010 upon which Landlord notifies Tenant that the 1A Additional Premises is dust-free and safe for Tenant's occupancy, as determined by Landlord in Landlord's sole and absolute discretion. However, it is specified that the Landlord shall provide its best efforts to complete the Landlord's Installations described in **Annex 3** to this Amendment at the earliest as from execution of the Amendment and no later than 30 June 2010. (The date upon which Landlord provides notice of 1A Early Access is referred to herein as the "**1A Early Access Date**"; the period between the 1A Early Access Date and the 1A Commencement Date is referred to herein as the "**1A Early Access Period**").

Any such permission shall constitute a license only, conditioned upon (a) Tenant and Tenant's contractors obtaining Landlord's prior written consent (not to be unreasonably withheld) with regard to each item of 1A Tenant Work that any of such parties desire to undertake during the 1A Early Access Period, and (b) Tenant's 1A Early Access not materially interfering with Landlord's operation at the Property.

Tenant's 1A Early Access shall be subject to (and, during such period, Tenant must comply with) all of the terms and provisions of the Lease, as amended hereby, except only the payment of 1A Additional Base Rent (as hereinafter defined). Additionally, Tenant agrees that (y) Landlord's obligations to provide the 1A Additional Power shall commence on the 1A Commencement Date and shall not apply during the 1A Early Access Period, and (z) while Tenant shall not be required to pay 1A Additional Base Rent during the 1A Early Access Period, Tenant shall be required to pay any and all electricity charges that accrue to the 1A Additional Premises during the 1A Early Access Period.

ARTICLE 2: PATHWAYS

A. ADDITIONAL PATHWAYS. The Tenant will operate the business activities and datacentre activities that are/ will be carried out on the 1 A Additional Premises in conjunction with the Original Leased Premises and the premises in the building already occupied by EQUINIX FRANCE SAS under the terms of the commercial lease dated July 21, 2006, and to this end the Tenant will require additional pathways and ducts interconnecting these areas and premises.

B. Subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed and which shall be sought in compliance with the provisions of article 11.2.1, the Tenant has the right, as of the 1A Commencement Date, to install new additional technical ducts (collectively, the "**1A Additional Pathways**") of a maximum of 80 mm to 100 mm each, grouped into routes, for the sole purpose of connecting the 1A Additional Premises with the Original Leased Premises and/or the premises in the Building already occupied by EQUINIX FRANCE SAS under the terms of the commercial lease dated July 21, 2006 (the areas corresponding to the premises leased under this separated lease dated July 21, 2006, are collectively referred to herein as "**PA2 Area**"), or to areas in use by Landlord for connecting Networks ("PoP rooms", or fiber entry points).

Such Tenant's installation shall be subject to (and, during such period, Tenant must comply with) all of the terms and provisions of the Lease, as amended hereby, including – but not limited to- Articles 11.2.1., 11.2.2. and 11.2.10 of the Lease.

C. TOTAL PATHWAYS. Accordingly, effective as of the 1A Commencement Date, the third paragraph of Article 11.2.10 of the Lease is hereby amended in its entirety to read as follows:

> "The Landlord authorizes the Tenant, as of the execution date of the Lease, to install a maximum of twelve (12) technical ducts of a maximum of 80 mm each, grouped into routes, for the sole purpose of connecting the Original Leased Premises with the premises in the Building already occupied by the EQUINIX FRANCE SAS under the terms of the commercial lease dated July 21, 2006. An example of how the ducts may be routed appears in **Annex 11**. Additionally, subject to Landlord's prior written approval, which shall not be unreasonably withheld conditioned or delayed, the Tenant has the right, as of the 1A Commencement Date, to install new additional technical ducts of a maximum of 80 mm to 100 mm each, grouped into routes, for the sole purpose of connecting the 1A Additional Premises with the Original Leased Premises and the premises in the Building already occupied by EQUINIX FRANCE SAS under the terms of the commercial lease dated July 21, 2006, or to areas in use by Landlord for connecting Networks ("PoP rooms", or fiber entry points). Such Tenant's installation shall be subject to (and, during such period, Tenant must comply with) all of the terms and provisions of the Lease, as amended."

Landlord shall grant to Tenant regular and reasonable access for installation and maintenance of these connections.

ARTICLE 3: ELECTRICAL POWER

A. ADDITIONAL ELECTRICAL POWER. Commencing on the 1A Commencement Date, the Tenant shall have access to, and the Tenant's Electricity Consumption Threshold shall be increased by, 3Mva (hereinafter the "**1A Additional Power**").

B. TOTAL ELECTRICAL POWER. Accordingly, effective as of the 1A Commencement Date:

(i) The last sentence of Article 1.1 of the Lease is hereby amended in its entirety to read as follows: "The Tenant shall have access to a gross electric output of ***15Mva*** for the Leased Premises."

(ii) The third paragraph of Article 11.2.3 of the Lease is hereby amended in its entirety to read as follows:

"The Tenant shall have access to a gross electric output of ***15Mva*** for the Leased Premises, it being specified that the Landlord shall not disturb the Tenant's use of such power. The Tenant shall be solely responsible for entering into all electricity supply contracts for the Leased Premises and shall bear all costs relating to the provision of this electricity supply to said premises."

(iii) The first sentence of Article 11.3 of the Lease is hereby amended in its entirety to read as follows: "The Tenant's actual electricity consumption for the Leased Premises, as reasonably determined by the Landlord shall not, at any time, exceed ***15Mva*** for the Leased Premises (the "**Electricity Consumption Threshold**")."

C. CONTACTS WITH ERDF. Landlord will use reasonable efforts to support Tenant with its dealings with Electricité Réseau Distribution France (ERDF) regarding utility electricity supply. In the event there is a need for works to be carried out by ERDF to the ERDF infrastructure extent at the Building, these works will be subject to the prior written consent of the Landlord, such consent to be at the sole and absolute discretion of the Landlord.

ARTICLE 4: WORKS AND FITTING-OUTS

A. WORKS PERFORMED BY TENANT PRIOR TO THIS AMENDMENT. Without prejudice of the provisions of the Lease, including in particular Article 11.2.1., Tenant shall provide Landlord with "as built" drawings of the works performed by the Tenant, or on behalf of the Tenant, in the Leased Premises prior to the execution of this Amendment within sixty (60) days as from execution of the Amendment.

Within fifteen (15) days upon receipt of these "as built" drawings, and provided that these "as built" drawings are satisfactory to Landlord, Landlord shall approve each drawing in writing.

However, Tenant acknowledges and agrees that, in no event shall this Landlord's approval be considered as a waiver of Tenant's exclusive responsibility for the performance of such works. For the avoidance of doubt Tenant hereby acknowledges and agrees that these works were performed in its sole and absolute responsibility, and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from, any and all claim arising in connection with the performance of said works.

B. **AMENDED PROCEDURE FOR TENANT'S WORKS.** Effective as of the 1A Commencement Date:

(i) the third (3rd) paragraph of Article 11.2.1 of the Lease is hereby amended in its entirety to read as follows:

"With regard to work requiring the Landlord's approval, the Tenant shall submit in writing a request to the Landlord, including a description of the work planned, accompanied by the related technical and architect's plans, a risk analysis, a provisional work timetable and a report issued by an approved inspection agency without any reservations. The Landlord shall not withhold its authorization of such work without valid reason. The Landlord undertakes to reply within no more than fifteen (15) days of receipt of the complete file referred to above. In the absence of a reply within this time limit, the Landlord shall be deemed to have accepted the Tenant's work, the Tenant being entitled to require later on from the Landlord a written confirmation that the works were deemed accepted by him"; and

(ii) The fourth (4th) paragraph of Article 11.2.1. is hereby deleted in its entirety.

C. **LANDLORD'S INSTALLATIONS.** Landlord agrees to perform the Landlord's Additional Installations defined in **Annex 3** to this Amendment prior to the 1A Commencement Date and as soon as possible after execution of this Amendment.

D. **ACCESS TO PA2 AREA AND TO PA3 AREA.** Landlord acknowledges that Tenant intends to create in the POD4 Area several accesses to the PA2 and PA3 Areas, both at the ground floor and mezzanine level, as shown in **Annex 2A** to this Amendment, in order to operate its business activities and datacentre activities. However, in no event shall such Landlord's acknowledgement be construed as authorization to proceed with said works. Each of said works shall be subject to the prior written approval of the Landlord, in accordance with the terms and provisions of the Lease, including, but not limited to, Article 11.2.1.

In this respect, Tenant undertakes that any and all work referred to under D. shall be carried out in its sole and absolute responsibility, and that prior to such realisation, Tenant shall cause EQUINIX FRANCE SAS, as Tenant under the lease dated July 21, 2006, to jointly and severally sign with Tenant a written request for authorization to Landlord identical to the form attached hereto under **Annex 2.C**, whereby Tenant and EQUINIX FRANCE SAS further agree unconditionally and irrevocably that any such work, and any consequence resulting therefrom, will be subject to the exclusive terms and conditions of the Lease, as amendment hereby.

ARTICLE 5: ACCESS TO F2 AREA - LANDLORD'S MAINTENANCE

Without prejudice of the provisions of the Lease, including in particular Article 11.2.10, Tenant hereby acknowledges and agrees that Landlord shall have reasonable access to the F2 Area (as this area is demarcated in **Annex 2A** to this Amendment) at the mezzanine level of the Building, for the ongoing maintenance and repair of Landlord's installations located above said F2 Area.

ARTICLE 6: RENT

A. 1A ADDITIONAL BASE RENT. This Amendment is entered into in consideration of an annual rent for all of the 1A Additional Premises and 1A Additional Pathways of, and the Base Rent under the Lease is hereby increased by, seven hundred eighty-eight thousand four hundred two and 40/100 Euros (€ 788,402.40) exclusive of tax and charges (hereinafter the "**1A Additional Base Rent**"), as of from Month 25, is October 2010, it being specified that the Tenant shall benefit from a rent abatement for the period between the 1A Commencement Date and the end of the third (3rd) calendar month thereafter, or 31 September 2010. No 1A Additional Base Rent shall be payable before 1 October 2010. The Tenant shall nevertheless pay all of the charges referred to in Article 7 of the Lease, as amended hereby, as from the 1A Commencement Date.

The 1A Additional Base Rent is subject to an annual increase of three percent (3%) per year, exclusive of tax and charges on each anniversary date of the Date of Entry into the Premises (or 1 October 2008, as this term is defined in the Lease), or as indicated hereinafter:

Month of Lease Term	Monthly 1A Additional Base Rent, excluding taxes
22-24	Abattement period
25-36	€ 65,700.20
37-48	€ 67,671.21
49-60	€ 69,701.34
61-72	€ 71,792.38
73-84	€ 73,946.15
85-96	€ 76,164.54
97-108	€ 78,449.47
109-120	€ 80,802.96
121-132	€ 83,227.05
133-144	€ 85,723.86

B. TOTAL BASE RENT. Accordingly, effective as of the 1A Commencement Date, or 1 July 2010, Article 6.1 of the Lease is hereby amended to read as follows for the period starting at month 22 of the Term:

"The Base Rent is subject to an annual increase of three percent (3%) per year, exclusive of tax and charges on each anniversary date of the Date of Entry into the Premises (as this term is defined in the Lease), or as indicated hereinafter:

Month of Lease Term	Total Monthly Base Rent, excluding taxes
22-24	€ 279,388.00
25-36	€ 353,469.20
37-48	€ 364,073.21
49-60	€ 374,995.34
61-72	€ 386,245.38
73-84	€ 397,833.15
85-96	€ 409,767.54
97-108	€ 422,060.47
109-120	€ 434,722.96
121-132	€ 447,764.05
133-144	€ 461,196.86"

C. CHARGES, SERVICE COSTS AND EXPENSES. Commencing on the 1A Commencement Date, Tenant's portion of all taxes, costs and expenses for the Property, as set forth in Article 7.1 of the Lease, is hereby increased by 11% (eleven percent) (the "**1A Pro Rata Increase**"). Accordingly, effective as of the 1A Commencement Date, the reference to "53.18% (fifty-three and eighteen percent)" in Article 7.1 of the Lease is hereby deleted and replaced with "64.18% (sixty-four and eighteen one-hundredths percent)" in lieu thereof.

The Parties agree that, Commencing on the 1A Commencement Date, and subject to its revision in accordance with the terms and conditions of the Lease, the advanced payment for the charges and expenses for the Leased Premises, as amended hereby, for the month of July 2010 will amount to € 66,949.71, VAT excluded.

ARTICLE 7: JOINT GUARANTY FROM EQUINIX INC.

(i) The Tenant shall provide to the Landlord, within thirty (30) business days following the signature of this Amendment, a Joint and Several Guarantee waving any Right to Contest or Divide liability (*cautionnement conjoint et solidaire avec renonciation aux benefices de discussion et de division*) by EQUINIX Inc., a company governed by the laws of the United States of America, having its registered office at 3500 South Dupont Highway, Dover, Delaware, 19901, United States of America, registered on the companies register under number 06293383 (hereinafter, the "**Guarantor**"), strictly identical to the form attached hereto as **Annex 6** (the "**Joint Guarantee**"), to guarantee to the Landlord, and its assignees and successors, the payment of any rent or charges for which Tenant, its assignees and successors, may be liable under the Lease and this Amendment, for any reason whatsoever, or for which the Landlord, and its assignees and successors, may be held liable on account of the Tenant, and its assignees and successors, hereunder, for any reason whatsoever.

(ii) The Joint Guarantee shall be provided together with a legal opinion substantially in the form attached hereto as **Annex 7** (the "**Legal Opinion**"), prepared by the American law firm DAVIS POLK & WARDWELL LLP confirming that (a) Guarantor has been validly formed or incorporated, (b)

Guarantor is authorized to enter into the Joint Guarantee, and no other consents or authorizations are required by any other third party in connection therewith, and (c) the individuals who are executing the Joint Guarantee on Guarantor's behalf are duly authorized and empowered by Guarantor to execute such document.

(iii) Upon remittance from Tenant to Landlord, no later than thirty (30) business days following the signature of this Amendment, of a duly executed original copy of the Joint Guarantee and of the Legal Opinion, in all respects in conformity with the aforementioned, then the Landlord shall deliver to the Tenant the original Guarantee provided to Landlord pursuant to Article 10.4.1. of the Lease in exchange for the Joint Guarantee. In such event, the provisions of Articles 10.4.4., 10.4.5 and 10.4.6. of the Lease shall apply *mutatis mutandis*, to the Joint Guarantee.

(iv) The Tenant's failure to provide the Landlord with the original copy of the Joint Guarantee and Legal Opinion referred to above, within thirty (30) business days, at the latest, will result in this Amendment being declared null and void by operation of law, without any indemnity being owed to the Tenant, and without prejudice to any of the Landlord's rights arising under the Lease or this Amendment following such nullity.

ARTICLE 8: COMPLIANCE WITH ENVIRONMENTAL LAWS

Notwithstanding anything to the contrary that is provided in the Lease, the Tenant shall, pursuant to the terms of Article 11.16 of the Lease, at the Tenant's sole cost and expense, timely take all action required to cause the Leased Premises to comply at all times during the term of the Lease in all respects with all Applicable Laws.

In addition, a new paragraph is hereby added after Article 11.6.4, 3rd paragraph of the Lease: "Tenant shall provide all monitoring results and/or any other up-to-date documentation showing compliance of its activities in the Leased Premises and of any ICPE located therein with Applicable Laws (including, without limitation, Environmental Laws) upon request from the Landlord, in order for Landlord to prepare for, and to respond to, any request for information and/or documentation from any competent administrative authority; if Tenant fails to provide the results/documentation in the requested timeframe, Landlord will be entitled to have access to the site and perform all adequate compliance audit at the Tenant's sole expense."

ARTICLE 9: NATURE OF THE LEASE.

A. This Amendment is governed by the provisions of Articles L. 145-1 to L. 145-60 of the French Commercial Code as well as by the provisions of Articles D. 145-12 to D. 145-19 and those of Articles R. 145-1 to R 145-33 of the French Commercial Code, and by the provisions of Article 33 of the French Decree no. 53-960 of 30 September 1953.

B. The third and fourth sentences of the second paragraph of Article 2 of the Lease are hereby amended in their entirety to read as follows: "The Landlord reserves the right to conduct a ***biannual*** audit of the Tenant's insurance certificates for the Leased Premises and equipment. In regards to this***biannual*** audit, the Tenant shall make available to the Landlord the maintenance records concerning equipment installed by Tenant in the Leased Premises."

C. The last sentence of the second paragraph of Article 2 of the Lease is hereby amended in its entirety to read as follows: "These ***biannual*** audits and these inspections shall be at the sole cost of the Landlord."

ARTICLE 10: SECURITY DEPOSIT AND FIRST DEMAND GUARANTEE

In lieu of the Security Deposit (as defined in Article 10.1 of the Lease), Tenant agrees to provide Landlord, within thirty (30) days following the date of this Amendment, with a first demand guarantee drafted in French and issued by an institutional lender of good financial standing, exercisable in France only, and payable to Landlord upon demand in the amount of Euros 1,612,500.00, and substantially similar to the form attached hereto under **Annex 8** (the "**First Demand Guarantee**"). Such First Demand Guarantee will be re-issued in a substantially similar form, in the event of renewal of the Lease or of a transfer of the Building to any successors and assigns of the Landlord. Within five (5) business days following Landlord's receipt of the First Demand Guarantee, Landlord agrees to return to Tenant the then current amount of the Security Deposit and any interests due on the Security Deposit in accordance with the provisions of Article 10 of the Lease, and thereafter no cash Security Deposit shall be held anymore by Landlord under the Lease.

ARTICLE 11: MISCELLANEOUS

A. The amount of domestic fuel which Landlord authorises the Tenant to use, for the purposes of its business activity in the Leased Premises, as set forth in Article 11.16.3 of the Lease, is hereby amended to be 240 m^3.

B. In the event that the terms of the Lease conflict or are inconsistent with those of this Amendment, the terms of this Amendment shall govern.

C. The Lease is hereby amended as and where necessary to give effect to the express terms of this Amendment.

D. This Amendment shall become effective only upon the execution and delivery by both the Landlord and the Tenant.

E. An English translation of this Amendment is attached hereto, and incorporated herein, as **Annex 9** (the "**English 1A Translation**").

The parties hereby specifically acknowledge and agree, as follows:

a. The English 1A Translation attached as **Annex 9** has been attached for ease of reference.

b. Clause a., above, notwithstanding, in the event that there are any translational discrepancies between the English 1A Translation and the Amendment (to which the English 1A Translation is attached), the parties hereby specifically acknowledge and agree that the Amendment (i.e., the French version of the Amendment) shall govern and control.

IN PARIS,

ON MARCH, 2010

IN TWO (2) COPIES

THE LANDLORD **THE TENANT**

GUARANTEE FOR

RENT AND CHARGES PAYMENT

EQUINIX INC., a company incorporated under the Laws of Delaware, the registered office of which is situated 3500 South Dupont Highway, Dover, DE 19901, Delaware, USA, registered under number 29 11 438, represented by Mr. Stephen Smith, as Director, duly authorised for the purpose of this Guarantee

Hereafter "the Guarantor"

Declares that it guarantees the undertakings:

of **EQUINIX PARIS SAS**, a French *société par actions simplifiée,* with share capital of € 37,000, the registered office of which is situated 167, rue de la Belle Etoile Parc d'Activité Paris Nord II – 95700 Roissy-en-France, registered at the French Trade and Companies Registry of Pontoise under number 508 444 551.

Hereafter "the Guaranteed Party"

Or "the Tenant"

In favour of:

DIGITAL REALTY (PARIS2) SCI, a French *société civile immobilière,* with share capital of € 866,000, the registered office of which is situated 52, rue de la Victoire, 75009 Paris, registered at the French Trade and Companies Registry under number 492 802 947 R.C.S. Paris, and of any future owner of the leased premises

Hereafter "the Lessor"

In respect of the payment of rents and charges that the Guaranteed Party may owe to the Lessor under the terms of the attached lease agreement dated 30th September 2008 **(Annex 1) and its amendment n° 1 dated [—] March 2010 (Annex 2)** between the Lessor and the Guaranteed Party for premises located at 114 rue Ambroise Croizat, 93220 Saint-Denis, for a fixed term of 12 years, starting on 1st October 2008 and ending on 30th September 2020, such guarantee being maintained in the event of renewal (hereafter the "Lease Agreement").

To this end, the Guarantor waives its right to request that the Lessor (i) seeks prior enforcement against the Guaranteed Party (*bénéfice de discussion*) and (ii) apportions its claim against all debtors *pro rata* to their share of the debt (*bénéfice de division*).

This Guarantee can only be validly called by registered letter with acknowledgement of receipt sent by the Lessor to the Guarantor at its registered office during the time when it is valid and within 3 month after the Tenant's default, and after unsuccessful formal notice to pay sent to the Tenant in the terms and conditions of the Lease Agreement.

Such registered letter shall contain all the relevant documents evidencing the sums for which the Guarantee is called.

Payment must be made within eight (8) working days from the date of the receipt by the Guarantor of the registered letter with acknowledgement of receipt referred to above.

This undertaking shall be irrevocable and unconditional as from the Date of Entry into Possession and throughout the entire term of the Lease Agreement, including its further renewals.

All costs and duties resulting from this Guarantee shall be borne by the Guarantor.

Any and all disputes arising from the interpretation or performance of this Guarantee shall be subject to the exclusive jurisdiction of the Courts under the competence of the Paris Court of Appeal that shall apply French Law.

Signature

Annex 1 – Commercial Lease dated 30 September 2008
Annex 2 – Amendment dated March 2010

Exhibit 21.1

List of Equinix's Subsidiaries

Name	Jurisdiction
Equinix Operating Co., Inc.	Delaware
Equinix RP, Inc.	Delaware
Equinix RP II LLC	Delaware
CHI 3, LLC	Delaware
NY3, LLC	Delaware
SV1, LLC	Delaware
LA4, LLC	Delaware
Equinix Pacific, Inc.	Delaware
Sundance Acquisition Corporation	Delaware
CHI 3 Procurement, LLC	Illinois
Equinix Asia Pacific Pte Ltd	Singapore
Equinix Singapore Holdings Pte Ltd	Singapore
Equinix Singapore Pte Ltd	Singapore
Equinix Pacific Pte Ltd	Singapore
Equinix Japan KK (in Kanji)	Japan
Equinix Australia Pty Ltd	Australia
Equinix Hong Kong Ltd	Hong Kong
Equinix Europe Ltd	United Kingdom
Equinix Group Ltd	United Kingdom
Equinix (UK) Ltd	United Kingdom
Equinix (Services) Ltd	United Kingdom
Equinix Corporation Ltd	United Kingdom
Equinix Investments Ltd	United Kingdom
Equinix (London) Ltd	United Kingdom
Equinix (Dusseldorf) GmbH	Germany
Equinix (Real Estate) GmbH	Germany
Equinix (Germany) GmbH	Germany
Equinix (IBX Services) GmbH	Germany
Upminster GmhH	Germany
Equinix (France) SAS	France
Equinix Paris SAS	France
Interconnect Exchange Europe SL	Spain
Equinix (Switzerland) AG	Switzerland
Equinix Services (Switzerland) AG	Switzerland
Intelisite BV	The Netherlands
Equinix (Netherlands) BV	The Netherlands
Equinix (Netherlands) Holding Coöperatie U.A	The Netherlands
Equinix (Holdings) B.V.	The Netherlands
Virtu Secure Web Services BV	The Netherlands

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: April 28, 2010

/s/ Stephen M. Smith
Stephen M. Smith
Chief Executive Officer and President

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: April 28, 2010

/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, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Stephen M. Smith, Chief Executive Officer and President 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
Chief Executive Officer and President

April 28, 2010

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, 2010, 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

April 28, 2010