

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

**FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

EQUINIX, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation or Organization)

77-0487526
(I.R.S. Employer
Identification Number)

**301 Velocity Way, Fifth Floor
Foster City, CA 94404
(650) 513-7000**
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Brandi Galvin Morandi
General Counsel and Secretary
Equinix, Inc.
301 Velocity Way, Fifth Floor
Foster City, CA 94404
(650) 513-7000**
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

The Commission is requested to send copies of all communications to:

**Alan F. Denenberg
Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, California 94025
(650) 752-2000**

**Jonathan A. Schaffzin
William J. Miller
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
(212) 701-3000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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 the 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 (Do not check if a smaller reporting company)

Smaller reporting company

CALCULATION OF REGISTRATION FEE

| Title of each class of Securities to be Registered | Amount to be Registered(1) | Proposed Maximum Offering Price per Security | Proposed Maximum Aggregate Offering Price(1) | Amount of Registration Fee(1) |
|--|----------------------------|--|--|-------------------------------|
| Senior Notes due 2018 | \$— | 100% | \$— | \$— |

(1) An indeterminate amount of securities to be offered at indeterminate prices is being registered pursuant to this registration statement. The registrant is deferring payment of the registration fee pursuant to Rule 456(b) and is omitting this information in reliance on Rule 456(b) and Rule 457(r).

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The information in this prospectus is not complete and may be changed. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED FEBRUARY 22, 2010



EQUINIX

\$500,000,000

Equinix, Inc.

% Senior Notes due 2018

The notes will bear interest at the rate of % per year. Interest on the notes will accrue from and be payable semi-annually in arrears on and of each year, commencing on , 2010. The notes will mature on , 2018. We may redeem all or a part of the notes on or after , 2014, on any one or more occasions, at the redemption prices set forth under "Description of Notes—Redemption," plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date. In addition, at any time prior to , 2013, we may on any one or more occasions redeem up to 35% of the aggregate principal amount of the notes outstanding under the indenture with the net cash proceeds of one or more equity offerings. At any time prior to , 2014, we 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 a "make-whole" premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption.

The notes will be our general senior obligations and will rank equal in right of payment to all of our existing and future senior indebtedness. Upon a change in control, we will be required to make an offer to purchase each holder's notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.

The notes will not be guaranteed by any of our subsidiaries. The obligations to make payments of principal and interest on the notes are solely our obligations. Therefore, the notes will be structurally subordinated to any obligation of our subsidiaries that are guarantors.

We have not applied, and do not intend to apply, for the listing of the notes on any exchange or automated dealer quotation system. Currently, there is no public market for the notes.

Investing in the notes involves risks. See "[Risk Factors](#)" beginning on page 11 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

| | Per Note | Total |
|---|----------|-------|
| Public Offering Price | % | \$ |
| Underwriting Discount | % | \$ |
| Proceeds to Equinix, Inc. (before expenses) | % | \$ |

The public offering price set forth above does not include accrued interest, if any. Interest on the notes will accrue from , 2010 to date of delivery.

The underwriters expect to deliver the notes to purchasers on or about , 2010, only in book-entry form through the facilities of The Depository Trust Company.

Joint Book-Running Managers

Citi

J.P. Morgan

Co-Managers

BofA Merrill Lynch

Barclays Capital

Goldman, Sachs & Co.

ING

RBS

, 2010

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You should rely only on the information contained in or incorporated by reference into this prospectus. Neither we nor the underwriters have authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. We are not, and the underwriters are not, making an offer or sale of notes in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in or incorporated by reference into this prospectus is accurate only as of the date appearing on the front cover of this prospectus or the date of the applicable incorporated document. Our business, financial condition, results of operations and prospects may have changed since that date.

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ABOUT THE PROSPECTUS

This prospectus incorporates important business and financial information about us and our subsidiaries that is not included in or delivered with this prospectus. Information incorporated by reference is available without charge to prospective investors upon written request to us at 301 Velocity Way, Fifth Floor, Foster City, California 94404, Attention: Investor Relations, or by telephone at (650) 513-7000.

We have not taken any action to permit an offering of the notes outside the United States or to permit the possession or distribution of this prospectus outside the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about and observe any restrictions relating to the offering of the notes and the distribution of this prospectus outside of the United States.

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You must comply with all applicable laws and regulations in force in any applicable jurisdiction and you must obtain any consent, approval or permission required by you for the purchase, offer or sale of the notes under the laws and regulations in force in the jurisdiction to which you are subject or in which you make your purchase, offer or sale, and neither we nor the underwriters will have any responsibility therefor.

We reserve the right to withdraw this offering of notes at any time. We and the underwriters also reserve the right to reject any offer to purchase, in whole or in part, for any reason, or to sell less than the amount of notes offered hereby.

Certain persons participating in this offering may engage in transactions that stabilize, maintain or otherwise affect the price of the notes. Such transactions may include stabilization and the purchase of notes to cover short positions. For a description of these activities, see "Underwriting."

References to "Equinix," the "Company," "we," "our" and "us" and similar terms mean Equinix, Inc., a Delaware corporation, and its consolidated subsidiaries, unless the context otherwise requires.

References to "Switch and Data" mean Switch & Data Facilities Company, Inc., a Delaware corporation, and its consolidated subsidiaries, unless the context otherwise requires.

References to the "notes" mean the Senior Notes due 2018 offered hereby, unless the context otherwise requires.

FORWARD-LOOKING STATEMENTS

This prospectus, including the documents incorporated by reference herein, 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 contained in this prospectus or incorporated by reference herein are based upon current expectations that involve risks and uncertainties. Any statements contained in this prospectus or incorporated by reference 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 the "Risk Factors" section, in addition to the other information set forth in this prospectus and incorporated by reference herein. All forward-looking statements contained in this prospectus or incorporated by reference herein are based on information available to us as of the date hereof and we assume no obligation to update any such forward-looking statements. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth in this prospectus under "Risk Factors." You should carefully consider the risks described in the "Risk Factors" section, in addition to the other information set forth in this prospectus and incorporated by reference herein, before making an investment decision.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-3 under the Securities Act relating to the notes offered by this prospectus. This prospectus is a part of that registration statement, which includes additional information not contained in this prospectus.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file with the SEC (including exhibits to such documents) at the SEC's Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our SEC filings are also available to the public at the SEC's website at www.sec.gov.

INCORPORATION BY REFERENCE

The SEC allows us to "incorporate by reference" the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934:

1. Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed on February 22, 2010.
2. Definitive Proxy Statement on Schedule 14A, filed on April 23, 2009 (excluding those portions that are not incorporated by reference into our Annual Report on Form 10-K for the fiscal year ended December 31, 2008).
3. Current Reports on Form 8-K, filed on January 6, 2010, January 19, 2010, January 29, 2010 and February 17, 2010.

We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed "filed" with the SEC, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K.

You may request, and we will provide you with, a copy of these filings, at no cost, by calling us at (650) 513-7000 or by writing to us at the following address:

Equinix, Inc.
301 Velocity Way, Fifth Floor
Foster City, CA 94404
Attn: Investor Relations

PROSPECTUS SUMMARY

This summary highlights information contained or incorporated by reference in this prospectus. Because this is only a summary, it does not contain all of the information that may be important to you. For a more complete understanding of our business and financial affairs, we encourage you to read this entire prospectus, including "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this prospectus, together with the documents incorporated by reference into this prospectus, before making a decision whether to invest in the notes.

Overview

We are the leading global provider of network-neutral data center and colocation services. Global enterprises, content providers, financial services companies and network service providers rely upon our insight and expertise to protect and connect their most valued information assets. We operate 49 International Business Exchange® (IBX) centers, or IBX data centers, across 18 markets in North America, Europe and Asia-Pacific where customers directly interconnect with a networked ecosystem of partners and customers. More than 360 network service providers offer access to more than 90% of the world's Internet routes inside our IBX data centers. This access to Internet routes provides our customers improved reliability and streamlined connectivity for optimized business transactions, while significantly reducing costs by reaching a critical mass of networks within a centralized physical location. For the year ended December 31, 2009 we had revenues of \$882.5 million, net income of \$69.4 million and adjusted EBITDA of \$408.6 million. For a discussion of our primary non-GAAP metric, adjusted EBITDA, including a reconciliation to GAAP financial measures, see our non-GAAP financial measures discussion in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.

Our services are primarily comprised of colocation, interconnection and managed IT infrastructure services.

- Colocation services include cabinets, power, operations space and storage space for customers' colocation needs.
- Interconnection services include cross connects, as well as switch ports on the Equinix Exchange service. These services provide scalable and reliable connectivity that allows customers to exchange traffic directly with the service provider of their choice or directly with each other, creating an optimized performing business ecosystem for the exchange of data between strategic partners.
- Managed IT infrastructure services allow customers to leverage our significant telecommunications expertise, maximizing the benefits of our IBX data centers and optimizing their infrastructure and resources.

Our network-neutral business model contributes to our success in the market. We offer our customers direct interconnection to an aggregation of bandwidth providers rather than focusing on selling a particular network, including the world's top carriers, Internet Service Providers (ISPs), broadband access networks (DSL / cable) and international carriers. AOL, at&t, British Telecom, Cable & Wireless, Comcast, Level 3, NTT, Qwest, SingTel, Sprint and Verizon Business are all currently located within our IBX data centers. Access to such a wide variety of networks has attracted a variety of customers, in various business sectors, including:

- Content Providers (eBay, Hulu, MSN, MySpace, Sony, Yahoo!, Zynga Game Network)
- Enterprise (Amazon.com, Capgemini, Deloitte & Touche, NASA, Salesforce.com, The McGraw-Hill Companies, United Stationers)
- Financial Companies (ACTIV Financial, BOX, Chi-X, Deutsche Börse Group, DirectEdge, Quantlab, Thomson Reuters)

Internet connectivity and the ability to efficiently distribute digital content or services across multiple networks to a global audience are core strategic requirements to an increasing number of businesses today. Customer demand for highly reliable, secure, network-neutral data center and colocation facilities continues to expand more rapidly than the supply of facilities available in the industry. We believe the factors contributing to the continued increase in demand for our services include:

- The continuing growth of consumer Internet traffic from new bandwidth-intensive services, such as video, VoIP, social media, mobile data, gaming, data-rich media, Ethernet and wireless services.
- Significant increases in power and cooling requirements for today's data center equipment. Servers have increased the overall level of power consumed and heat generation by more than two times since 2000 and many legacy-built data centers are unable to accommodate new power and cooling demands.
- The growth of enterprise applications, such as Software-as-a-Service (SaaS), and disaster recovery, and the adoption of cloud computing technology services.
- The financial services market is experiencing tremendous growth with the shift to electronic trading and increased volume of peak messages (transactions per second), requiring optimized data exchange through business ecosystems.
- The growth of "proximity communities" that rely on immediate physical colocation with their strategic partners and customers, such as financial exchange ecosystems for electronic trading and settlement.
- The high capital costs associated with building and maintaining "in-sourced" data centers creates an opportunity for capital savings by leveraging an outsourced model.

The supply and demand imbalance in the industry has, to date, created a favorable pricing environment for us, as well as an opportunity to increase market share. We have gained many customers that have outgrown their existing data centers or that have realized the benefits of a network-neutral model and the ability to create their own optimized business ecosystems for the exchange of data. Strategically, we will continue to look at attractive opportunities to grow market share and selectively expand our footprint and service offerings. We continue to leverage our global reach and depth to differentiate based upon our ability to support truly global customer requirements in all our markets.

Our Value Proposition

More than 2,600 companies, including a diversified mix of content providers, financial companies, global enterprises and network service providers, currently operate within our IBX data centers. These companies derive specific value from the following elements of our service offering:

- **Comprehensive global service offering.** With 49 IBX data centers in 18 markets in the U.S., Europe and Asia-Pacific, we offer a consistent global service.
- **Premium data centers:** Our IBX data centers feature advanced design, security, power and cooling elements to provide customers with industry-leading reliability. While others in the market have business models that include additional offerings, we are focused on data center services and interconnection as our core competency.
- **Dynamic business ecosystems.** Our network-neutral model has enabled us to attract a critical mass of networks that, in turn, attracts other businesses seeking to interconnect within a single location. This ecosystem model, versus connecting to multiple partners in disparate locations, reduces costs and optimizes the performance of data exchange. As we grow and attract an even more diversified base of customers, the value of our IBX data center offering increases.
- **Improved economics:** Customers seeking to outsource their data center operations rather than build their own capital-intensive data centers enjoy significant capital cost savings in this credit-challenged economic environment. Customers also benefit from improved economics on account of the broad access to

networks we provide. Rather than purchasing costly local loops from multiple transit providers, customers can connect directly to more than 360 networks inside our IBX data centers.

- **Leading insight:** With more than 10 years of industry experience, we have a specialized staff of industry experts who helped build and shape the interconnection infrastructure of the Internet. This specialization and industry knowledge base offer customers a unique consultative value and a competitive advantage.

Our Strategy

Our objective is to expand our global leadership position as the premier network neutral data center operator for content providers, financial companies and global enterprises seeking to protect and connect their most valued information assets. Key components of our strategy include the following:

Continue to build upon our critical mass of network providers and content companies and grow our position within the enterprise and financial sectors We have assembled a critical mass of premier network providers and content companies and have become one of the core hubs of the information-driven world. This critical mass is a key selling point for companies that want to connect with a diverse set of networks to provide the best connectivity to their end-customers and network companies that want to sell bandwidth to companies and interconnect with other networks in the most efficient manner available. Currently, we service more than 360 unique networks, including all of the top tier networks, allowing our customers to directly interconnect with providers that serve more than 90% of global Internet routes. We have a growing mass of key players in the enterprise and financial sectors, such as Bank of America, The Gap, Gannett, IBM, Salesforce.com, Sony and others. We expect the content provider and financial segments to continue to serve as the principal driver of our growth.

Promote our IBX data centers as the most reliable data centers in the industry Data center reliability, power availability and network choice are the most important attributes considered by our customers when they are choosing a data center provider. Our IBX data centers are leading new business models and offer customers advanced security, reliability, optimized delivery performance of dynamic applications and rich content, and redundancy. Our security design in the U.S. IBX data centers includes five levels of biometrics security to access customer cages. Our power infrastructure in the U.S. includes N+1 redundancy for all systems and has delivered 99.999% uptime over the period January 1, 2002 through December 31, 2009. We provide access to more than 360 network service providers. Our global support staff, trained to aid customers with operational support, is available 24 hours a day, 365 days a year.

Leverage the network ecosystem. As networks, content providers, financial services providers and other enterprises locate in our IBX data centers, it benefits their suppliers and business partners to do so as well to gain the full economic and performance benefits of direct interconnection. These partners, in turn, pull in their business partners, creating a “network effect” of customer adoption. Our interconnection services enable scalable, reliable and cost-effective interconnection and optimized traffic exchange thus lowering overall cost and increasing flexibility. The ability to directly interconnect with a wide variety of companies is a key differentiator for us in the market.

Provide new products and services within our IBX data centers We plan to continue to offer additional products and services that are most valuable to our customers as they manage their Internet and network businesses and, specifically, as they attempt to effectively utilize multiple networks. Examples include our IBXLink services, which allow customers to easily move traffic between IBX data centers located in the same metro area, or the Financial Exchange service, which allows direct interconnection with electronic financial exchanges, such as the Chicago Mercantile Exchange, NASDAQ and ICAP in markets such as Chicago, Frankfurt, London, New York, Hong Kong and Paris.

Pursue growth in response to customer demand. We continue to evaluate expansion opportunities in select markets based on customer demand. We expect to open new IBX data centers, or IBX data center expansions, in 11 of our 18 markets in 2010. In addition, in October 2009, we entered into a definitive agreement to acquire Switch and Data which will extend our presence into 16 new markets in the U.S. and Canada. Completion of the merger remains subject to the satisfaction or waiver of closing conditions, including the clearance of the transaction by the Department of Justice under the Hart-Scott-Rodino Antitrust Improvement Act, as amended, or HSR Act.

Our strategy is to continue to grow in select existing markets and possibly expand to additional markets where demand and financial return potential warrant. We expect to execute this expansion strategy in a cost-effective and prudent manner through a combination of acquiring existing data centers through lease or purchase, or building new IBX data centers based on key criteria, such as demand and potential financial return, in each market.

Recent Developments

On October 21, 2009, we entered into an Agreement and Plan of Merger, or the Merger Agreement, with Switch and Data and Sundance Acquisition Corporation, our wholly-owned subsidiary, or Merger Sub, pursuant to which, subject to the satisfaction or waiver of the conditions therein, Merger Sub will be merged with and into Switch and Data, with Switch and Data surviving as our wholly-owned subsidiary. At the time of announcement, the transaction was valued at approximately \$689.0 million. Subject to the terms and conditions of the Merger Agreement, at the effective time of and as a result of the merger, each outstanding share of common stock of Switch and Data (other than dissenting shares and shares held by Switch and Data as treasury stock or owned by us) will be converted into merger consideration that will consist of 0.19409 shares of our common stock, \$19.06 in cash or a combination of shares of our common stock and cash. The Merger Agreement provides that the overall consideration to be paid by us in the merger will consist 80% of our common stock and 20% of cash.

Switch and Data is a provider of data centers that house, power and interconnect the Internet. Leading content companies, enterprises and communications service providers rely on Switch and Data to connect to customers and exchange Internet traffic. Switch and Data has built a reputation for service, delivered across a broad colocation footprint and a rich network of interconnections in North America. Switch and Data operates 34 sites in the U.S. and Canada.

On January 6, 2010, we received a Request for Additional Information (commonly referred to as a “second request”) from the Antitrust Division of the Department of Justice in connection with its review of the merger. This second request extends the waiting period imposed by the HSR Act until 30 days after we have substantially complied with the second request unless that period is extended voluntarily by us or terminated sooner by the Antitrust Division. We are in the process of compiling the documents to respond to the second request and currently expect the merger to close in the second quarter of 2010.

As further described elsewhere in this prospectus, we are involved in three lawsuits related to the merger. On January 19, 2010, counsel for parties in those 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.

On January 29, 2010, the stockholders of Switch and Data adopted and approved the Merger Agreement.

Completion of the merger remains subject to the satisfaction or waiver of closing conditions, including the clearance of the transaction by the Department of Justice under the HSR Act. See “Risk Factors—We may not receive clearance from the Department of Justice to consummate the acquisition of Switch and Data.”

Completion of the merger is not a condition of this offering.

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Company Information

Our principal executive offices are located at 301 Velocity Way, Fifth Floor, Foster City, CA 94404 and our telephone number is (650) 513-7000. Our website is located at www.equinix.com. Information contained on or accessible through our website is not part of this prospectus.

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The Offering

The following is a brief summary of certain terms of this offering. For a more complete description of the terms of the notes, see the section “Description of Notes.” In this “Prospectus Summary—The Offering” section, “we”, “us” and “Equinix” refer to Equinix, Inc. and not to any of its subsidiaries.

| | |
|------------------------|---|
| Issuer | Equinix, Inc., a Delaware corporation. |
| Securities Offered | \$500.0 million aggregate principal amount of % Senior Notes due 2018. |
| Maturity Date | , 2018. |
| Interest Payment Dates | Interest will accrue from and be payable semi-annually in arrears on and of each year, commencing on , 2010. |
| Redemption | <p>We may redeem all or a part of the notes on or after , 2014, on any one or more occasions, at the redemption prices set forth under “Description of Notes—Redemption,” plus accrued and unpaid interest thereon, if any, to, but not including, the applicable redemption date.</p> <p>In addition, at any time prior to , 2013, we may on any one or more occasions redeem up to 35% of the aggregate principal amount of the notes outstanding under the indenture, at a redemption price equal to % 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 at least 65% of the aggregate principal amount of the notes issued under the indenture remains outstanding immediately after the occurrence of such redemption. At any time prior to , 2014, we 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 a “make whole” premium as of, and accrued and unpaid interest, if any, to, but not including, the date of redemption.</p> |
| Ranking | <p>The notes will be our general senior obligations. Your right to payment under these notes will be:</p> <ul style="list-style-type: none">• effectively subordinated to all of our existing and future secured indebtedness, including our debt outstanding under any bank facility, to the extent of the assets securing such debt;• structurally subordinated to any existing and future indebtedness and other liabilities (including trade payables) of any of our subsidiaries;• equal in right of payment to all of our existing and future senior indebtedness; and• senior in right of payment to any of our existing and future subordinated indebtedness. |

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| | <p>At December 31, 2009, after giving pro forma effect to the offering, we would have had total consolidated indebtedness of approximately \$2.0 billion, none of which was secured indebtedness of Equinix. At such date, our subsidiaries had approximately \$889.2 million of indebtedness and other liabilities (including trade payables but excluding intercompany items and liabilities of a type not required to be reflected on the balance sheets of our subsidiaries).</p> |
| Guarantees | <p>On the issue date, the notes will not be guaranteed by any of our subsidiaries. In the future certain subsidiaries may be required to guarantee the notes. See “Description of Notes—Certain Covenants—Subsidiary Guarantees.”</p> |
| Covenants | <p>The indenture governing the notes will contain covenants that limit our ability and the ability of our restricted subsidiaries to, among other things:</p> <ul style="list-style-type: none">• 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. <p>Each of these restrictions have a number of important qualifications and exceptions. See “Description of Notes.” If the notes are rated investment grade at any time by both Standard & Poor’s and Moody’s most of the restrictive covenants contained in the indenture governing the notes will be suspended. See “Description of Notes—Certain Covenants—Suspension of Covenants.”</p> |
| Change of Control | <p>Upon the occurrence of a change of control (as defined in “Description of Notes”), we will be required to make an offer to purchase each holder’s notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase.</p> |
| Form and Denomination | <p>The notes will be issued only in registered form. The notes will initially be issued in minimum denominations of \$2,000. The notes initially sold by the underwriters will be represented by a single permanent global note in fully registered form, deposited with a custodian for and registered in the name of a nominee of The</p> |

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| | |
|-----------------|---|
| | <p>Depository Trust Company (“DTC”). Beneficial interests in the global note will be shown on, and transfers thereof will be effected only through, records maintained by DTC and its participants. Except as described herein, notes in certificated form will not be issued in exchange for the global note or interests therein.</p> |
| Risk Factors | <p>Investing in the notes involves risk. See “Risk Factors” and the other information included or incorporated by reference in this prospectus for a discussion of factors you should carefully consider before deciding to invest in the notes.</p> |
| Trading | <p>The notes are a new issue of securities, and there is currently no established trading market for the notes. An active or liquid market may not develop for the notes or, if developed, be maintained. We have not applied, and do not intend to apply, for the listing of the notes on any automated dealer quotation system.</p> |
| Governing Law | <p>The notes and the indenture under which they will be issued will be governed by New York law.</p> |
| Trustee | <p>U.S. Bank National Association.</p> |
| Use of Proceeds | <p>We estimate that we will receive net proceeds of approximately \$491.9 million from the offering, after deducting the underwriters’ discount and commissions and estimated offering expenses. We intend to use such net proceeds for general corporate purposes, which may include expansion capital expenditures and the repayment of indebtedness, including indebtedness that we expect to assume in connection with our planned acquisition of Switch and Data. See “Use of Proceeds.”</p> |

Summary Consolidated Financial Data

The following tables summarize our consolidated financial data for the periods presented. You should read this summary consolidated financial data in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus. The consolidated statements of operations data for the three years ended December 31, 2009 and the consolidated balance sheet data as of December 31, 2009 are derived from our audited consolidated financial statements included in this prospectus. The consolidated statements of operations data as of December 31, 2006 and 2005 are derived from our audited consolidated financial statements not included in this prospectus. Our historical results are not necessarily indicative of the results to be expected in the future.

| | Years ended December 31, | | | | |
|---|--------------------------|------------|-------------|------------|-------------|
| | 2009 | 2008 | 2007 | 2006 | 2005 |
| (dollars in thousands, except per share data) | | | | | |
| Consolidated Statement of Operations Data: | | | | | |
| Revenues | \$ 882,509 | \$ 704,680 | \$ 419,442 | \$ 286,915 | \$ 221,057 |
| Costs and operating expenses: | | | | | |
| Cost of revenues | 483,420 | 414,799 | 263,768 | 188,379 | 158,354 |
| Sales and marketing | 63,584 | 66,913 | 40,719 | 32,619 | 20,552 |
| General and administrative | 155,324 | 146,564 | 105,794 | 72,123 | 45,110 |
| Restructuring charges | (6,053) | 3,142 | 407 | 1,527 | 33,814 |
| Gain on asset sales | — | — | (1,338) | (9,647) | — |
| Acquisition costs | 5,155 | — | — | — | — |
| Total costs and operating expenses | 701,430 | 631,418 | 409,350 | 285,001 | 257,830 |
| Income (loss) from operations | 181,079 | 73,262 | 10,092 | 1,914 | (36,773) |
| Interest income | 2,384 | 8,940 | 15,406 | 6,627 | 3,584 |
| Interest expense | (74,232) | (61,677) | (32,014) | (14,630) | (8,905) |
| Other-than-temporary impairment loss on investments | (2,590) | (1,527) | — | — | — |
| Other income (expense) | 2,387 | 1,307 | 3,047 | (245) | 25 |
| Loss on debt extinguishment and conversion | — | — | (5,949) | — | — |
| Income tax benefit (expense) | (39,597) | 87,619 | (473) | (439) | (543) |
| Cumulative effect of a change in accounting principle | — | — | — | 376 | — |
| Net income (loss) | \$ 69,431 | \$ 107,924 | \$ (9,891) | \$ (6,397) | \$ (42,612) |
| Earnings (loss) per share: | | | | | |
| Basic | \$ 1.80 | \$ 2.91 | \$ (0.30) | \$ (0.22) | \$ (1.78) |
| Weighted average shares—basic | 38,488 | 37,120 | 32,595 | 28,796 | 23,956 |
| Diluted | \$ 1.75 | \$ 2.79 | \$ (0.30) | \$ (0.22) | \$ (1.78) |
| Weighted average shares—diluted | 39,676 | 41,582 | 32,595 | 28,796 | 23,956 |
| Other Financial Data: | | | | | |
| Net cash provided by operating activities | \$ 355,492 | \$ 267,558 | \$ 120,020 | \$ 75,412 | \$ 67,595 |
| Net cash used in investing activities | (558,178) | (478,040) | (1,054,725) | (158,470) | (108,722) |
| Net cash provided by financing activities | 323,598 | 145,106 | 1,145,013 | 46,107 | 134,611 |
| Adjusted EBITDA ⁽¹⁾ | 408,608 | 292,476 | 155,390 | — | — |
| Ratio of earnings to fixed charges ⁽²⁾ | 0.5x | 0.9x | 1.6x | 1.5x | — |

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| | As of December 31, 2009 | |
|--|-------------------------|----------------------------|
| | Actual | As Adjusted ⁽³⁾ |
| | (in thousands) | |
| Balance Sheet Data: | | |
| Cash, cash equivalents and short-term and long-term investments | \$ 604,367 | \$ 1,096,267 |
| Accounts receivable, net | 64,767 | 64,767 |
| Property, plant and equipment, net | 1,808,115 | 1,808,115 |
| Total assets | 3,038,150 | 3,538,150 |
| Current portion of capital lease and other financing obligations | 6,452 | 6,452 |
| Current portion of mortgage and loans payable | 58,912 | 58,912 |
| Capital lease and other financing obligations, excluding current portion | 154,577 | 154,577 |
| Mortgage and loans payable, excluding current portion | 371,322 | 371,322 |
| % Senior notes due 2018 offered hereby | — | 500,000 |
| Convertible debt | 893,706 | 893,706 |
| Total debt | 1,484,969 | 1,984,969 |
| Total liabilities | 1,855,667 | 2,355,667 |
| Total stockholders' equity | 1,182,483 | 1,182,483 |
| Selected Credit Statistics⁽⁴⁾: | | |
| Senior debt to adjusted EBITDA ratio ⁽⁵⁾ | 1.4x | 2.7x |
| Total debt to adjusted EBITDA ratio ⁽⁶⁾ | 3.6x | 4.9x |
| Net debt to adjusted EBITDA ratio ⁽⁷⁾ | 2.2x | 2.2x |
| Adjusted EBITDA to interest expense ratio ⁽⁸⁾ | 5.5x | 3.6x |
| <p>(1) For a discussion of our primary non-GAAP metric, adjusted EBITDA, see our non-GAAP financial measures discussion in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.</p> <p>(2) In calculating the ratio of earnings to fixed charges, earnings consist of net income (loss) before income tax expense, cumulative effect of a change in accounting principle and fixed charges. Fixed charges consist of interest expense, including such portion of rental expense that was attributed to interest. The ratio of earnings to fixed charges was less than 1.0 to 1.0 for the year ended December 31, 2005. The coverage deficiency for the year ended December 31, 2005 was \$42.1 million.</p> <p>(3) Reflects the sale of the notes offered hereby, after deducting underwriting discounts and estimated offering expenses, and excludes the effect of the proposed acquisition by Equinix of Switch and Data. For pro forma information giving effect to the proposed acquisition by us of Switch and Data, see "Unaudited Pro Forma Combined Consolidated Condensed Financial Statements."</p> <p>(4) The following ratios are calculated in a manner consistent with our financial statements, which may not be consistent with the manner in which such ratios would be calculated under the indenture.</p> <p>(5) Senior debt to adjusted EBITDA ratio is presented as senior debt (which is total debt less convertible debt) divided by adjusted EBITDA.</p> <p>(6) Total debt to adjusted EBITDA ratio is presented as total debt divided by adjusted EBITDA.</p> <p>(7) Net debt to adjusted EBITDA ratio is presented as total debt less cash, cash equivalents and short-term and long-term investments divided by adjusted EBITDA.</p> <p>(8) Adjusted EBITDA to interest expense ratio is presented as adjusted EBITDA divided by interest expense and, with respect to as adjusted, at an assumed interest rate.</p> | | |

RISK FACTORS

Any investment in the notes involves a high degree of risk. You should consider the risks described below carefully and all of the information contained and incorporated by reference in this prospectus before deciding whether to purchase the notes. The risks and uncertainties described below are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. If any of the events described in the following risks actually occur, our business, financial condition and results of operations could suffer. In that event, the price of the notes could decline, and you may lose all or part of your investment in the notes. The risks discussed below also include forward-looking statements and our actual results may differ substantially from those discussed in these forward-looking statements. See "Forward-Looking Statements."

Risks Relating to Our Business

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, including as a result of this offering, to support our growth. As of December 31, 2009, our total indebtedness was approximately \$1.5 billion, our stockholders' equity was \$1.2 billion and our cash and investments totaled \$604.4 million.

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 and financial condition.

In addition, of our total indebtedness as of December 31, 2009, \$591.3 million 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 December 31, 2009. 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.

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We may also need to refinance a portion of our outstanding debt as it matures, such as our \$110.0 million Chicago IBX financing, which will ultimately become due in 2012 once we use our remaining extension option, and 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 \$689.0 million at the time of announcement. 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;

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- 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.

We may not receive clearance from the Department of Justice to consummate the acquisition of Switch and Data.

In October 2009, we announced that we had entered into an agreement to acquire Switch and Data in a transaction valued at approximately \$689.0 million at the time of announcement. In January 2010, the stockholders of Switch and Data voted in favor of the transaction. There are several remaining conditions to the closing of the transaction, including the clearance of the transaction by the Department of Justice under the HSR Act. The Department of Justice has issued a second request in which it has requested a substantial number of documents from us and Switch and Data in order to complete its review of the transaction. While we expect to be in a position to close the transaction in the second quarter of 2010, there can be no assurance that we will be able to do so. Furthermore, the Department of Justice could determine that it will bring a suit if we attempt to close the transaction. In addition, the Department of Justice could impose conditions upon its clearance of the transaction, such as the divestiture of certain assets, which could make the acquisition of Switch and Data less attractive to us. Accordingly, there can be no assurance that we will be able to consummate the acquisition of Switch and Data in a timely manner or at all, or that conditions will not be imposed on the consummation of the transaction that result in our concluding that we do not wish to consummate it.

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.

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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 fiscal 2007 and 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. In future periods, strengthening of the U.S. dollar could 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 elsewhere in this prospectus.

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.

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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 December 31, 2009, our accumulated deficit was \$386.0 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 several additional IBX data centers and IBX data center expansions. As a result, we will incur higher depreciation and other operating expenses, as well as 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;

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- 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

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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

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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.

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

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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.

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

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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.

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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;

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- 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.

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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 us. 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 us, 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 we merged Pihana and i-STT (a subsidiary of Singapore Technologies Telemedia Pte Ltd) into our internet exchange services business. 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 ourselves 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 us 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 has been submitted with respect to claims against one defendant and plaintiffs’ renewed request for further leave to amend. The Court has not yet entered a final Order on the motions to dismiss. We believe that plaintiffs’ claims and alleged damages are without merit and we intend 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 us, 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 we aided and abetted these alleged breaches. The second complaint, filed October 30, 2009 in Florida state court, raises

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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 memorandum of understanding provides that the parties will seek approval of the settlement in Florida state court and that simultaneously, the parties will agree to stay the actions pending in the Delaware Chancery Court and the Florida federal court. The proposed settlement is conditional upon, among other things, the execution of an appropriate stipulation of settlement, 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.

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.

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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.

Risks Relating to the Notes

References to “Equinix,” the “Company,” “we,” “our” and “us” and similar terms in this section “Risk Factors—Risks Relating to the Notes” mean Equinix, Inc. and not any of its subsidiaries.

Our subsidiaries will not guarantee the notes. We depend in large part on the cash flow from our subsidiaries to meet our obligations, and your claims will be subordinated to all of the creditors of these subsidiaries.

Our subsidiaries will not guarantee the notes. Our subsidiaries are separate and distinct legal entities with no obligation to pay any amounts due pursuant to the notes or to provide us with funds for our payment obligations. Substantially all of our operations are conducted through our subsidiaries and we derive substantially all our

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revenues from our subsidiaries, and substantially all of our operating assets are owned by our subsidiaries. As a result, our cash flow and our ability to service our indebtedness, including the notes, depends in large part on the earnings of our subsidiaries and on the distribution of earnings, loans or other payments to us by these subsidiaries. Payments to us by our subsidiaries also will be contingent upon their earnings and their business considerations. In addition, the ability of our subsidiaries to make any dividend, distribution, loan or other payment to us could be subject to statutory or contractual restrictions. Because we depend in large part on the cash flow of our subsidiaries to meet our obligations, these types of restrictions may impair our ability to make scheduled interest and principal payments on the notes. Our subsidiaries held approximately 72% of our consolidated assets as of December 31, 2009.

The notes will be unsecured and effectively subordinated to any of our secured indebtedness and structurally subordinated to all of the liabilities of our subsidiaries.

The notes will be our general unsecured senior obligations, ranking equal in right of payment with our existing and any future unsubordinated indebtedness. However, because they are unsecured, the notes will be effectively junior to any of our existing and future secured indebtedness. At December 31, 2009, after giving pro forma effect to the offering, we would have had total consolidated indebtedness of approximately \$2.0 billion, none of which was secured indebtedness of Equinix.

In addition, the notes will be structurally subordinated to all of the liabilities of our subsidiaries, which may include indebtedness, trade payables, guarantees, lease obligations and letter of credit obligations. In the event of a bankruptcy, liquidation or reorganization of any of our subsidiaries, holders of their indebtedness and their trade creditors will generally be entitled to payment of their claims from the assets of those subsidiaries before any assets of the subsidiaries are made available for distribution to us. As of December 31, 2009, our subsidiaries had \$889.2 million of indebtedness and other liabilities (including trade payables but excluding intercompany items and liabilities of a type not required to be reflected on a balance sheet of such subsidiaries).

In addition, the indenture governing the notes will permit us and our subsidiaries to incur significant amounts of additional indebtedness, including secured indebtedness. In the event that we are declared bankrupt, become insolvent or liquidate or reorganize, our assets that serve as collateral under any such secured indebtedness would be made available to satisfy the obligations under the secured indebtedness before those assets may be used to satisfy our obligations with respect to the notes. Holders of the notes will participate ratably with all holders of our unsecured indebtedness that is deemed to be of the same class as the notes, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets. In any of the foregoing events, we cannot assure you that there will be sufficient assets to pay amounts due on the notes. As a result, holders of the notes may receive less, ratably, than holders of secured indebtedness.

Our debt agreements allow us and our subsidiaries to incur significantly more debt, which could exacerbate the other risks described herein.

The terms of our debt instruments, including the indenture governing the notes offered hereby, permit us and our subsidiaries to incur additional indebtedness. Additional debt may be necessary for many reasons, including to adequately respond to competition, to comply with regulatory requirements related to our service obligations or for financial reasons alone. Incremental borrowings or borrowings at maturity on terms that impose additional financial risks to our various efforts to improve our operating results and financial condition could exacerbate the other risks described herein.

We may not be able to repurchase the notes upon a change of control.

Upon the occurrence of a change of control (as defined in “Description of Notes—Change of Control”), we will be required to make an offer to purchase each holder’s notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but not including, the date of repurchase.

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If we experience a change of control, we may not have sufficient financial resources available to satisfy our obligations to repurchase the notes. Our failure to repurchase the notes as required under the indenture governing the notes would result in a default under the indenture, which could result in defaults under our and our subsidiaries' other debt agreements and have material adverse consequences for us and the holders of the notes. See "Description of Notes—Change of Control." Moreover, if holders of the notes elect to have their notes repurchased by us, it could cause a default under our existing or future debt, even if the change of control itself does not result in a default under existing or future debt, due to the financial effect of such repurchase on us.

The terms of the indenture and the notes provide only limited protection against significant corporate events that could affect adversely your investment in the notes.

While the indenture and the notes contain terms intended to provide protection to holders upon the occurrence of certain events involving significant corporate transactions or our creditworthiness, these terms are limited and may not be sufficient to protect your investment in the notes. As described under "Description of the Notes — Change of Control," upon the occurrence of a change of control, we will be required to make an offer to purchase each holder's notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest to, but not including, the date of repurchase. However, the change of control provisions may not protect you if we undergo a highly leveraged transaction, reorganization, restructuring, acquisition or similar transaction that may negatively affect the value of your notes unless the transaction is included within the definition of a change of control. If we were to enter into a significant corporate transaction that would negatively affect the value of the notes, but that would not constitute a change of control triggering event, you would not have any rights to require us to repurchase the notes prior to their maturity, which also would adversely affect your investment.

An active trading market for the notes may not develop or be maintained; many factors affect the trading market and value of the notes.

The notes are a new issue of securities with no trading history or established trading market. We cannot assure you that a trading market for the notes will ever develop or, if a trading market develops, that it will be maintained or provide adequate liquidity, that holders will be able to sell any of the notes at a particular time (if at all) or that the prices holders receive if or when they sell the notes will be above their initial offering price. We have not applied, and do not intend to apply, for the listing of the notes on any automated dealer quotation system.

The market valuation of the notes may be exposed to substantial volatility.

A real or perceived economic downturn or higher interest rates could cause a decline in the notes, and to high-yield bonds generally, and thereby negatively impact the market for high-yield bonds, and more specifically, the notes. Because the notes may be thinly traded, it may be more difficult to sell and accurately value the notes. In addition, as has recently been evident in the recent turmoil in the global financial markets, the present economic slowdown and the uncertainty over its breadth, depth and duration, the entire high-yield bond market can experience sudden and sharp price swings, which can be exacerbated by large or sustained sales by major investors in the notes, a high-profile default by another issuer, or simply a change in the market's psychology regarding high-yield notes.

Our credit ratings may not reflect all of the risks of an investment in the notes.

The credit ratings on the notes may not reflect the potential impact of all of the risks related to structure and other factors on the value of the notes. In addition, actual or anticipated changes in our credit ratings will generally affect the market value of the notes.

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We may invest or spend the net proceeds of this offering in ways with which you may not agree and in ways that may not earn a profit.

We intend to use the net proceeds of this offering for general corporate purposes, which may include expansion capital expenditures and the repayment of indebtedness, including indebtedness that we expect to assume in connection with our planned acquisition of Switch and Data. However, we will retain broad discretion over the use of the net proceeds from this offering. You may not agree with the ways we decide to use these proceeds, and our use of the proceeds may not yield any profits.

If a bankruptcy petition were filed by or against us, holders of notes may receive a lesser amount for their claim than they would have been entitled to receive under the indenture governing the notes.

If a bankruptcy petition were filed by or against us under the U.S. Bankruptcy Code after the issuance of the notes, the claim by any holder of the notes for the principal amount of the notes may be limited to an amount equal to the sum of:

- the original issue price for the notes; and
- that portion of the original issue discount that does not constitute “unmatured interest” for purposes of the U.S. Bankruptcy Code.

Any original issue discount that was not amortized as of the date of the bankruptcy filing would constitute unmatured interest. Accordingly, holders of the notes under these circumstances may receive a lesser amount than they would be entitled to under the terms of the indenture governing the notes, even if sufficient funds are available.

The notes may be issued with original issue discount for U.S. federal income tax purposes.

The notes may be issued with “original issue discount” for U.S. federal income tax purposes. If the notes are issued with original issue discount, a U.S. Holder (as defined under “Material U.S. Federal Income Tax Consequences”) would generally be required to include the original issue discount in income on a current basis before receiving the cash attributable to that income. See “Material U.S. Federal Income Tax Consequences.”

If the notes are rated investment grade at any time by both Standard & Poor’s and Moody’s, most of the restrictive covenants contained in the indenture governing the notes will be suspended.

If, at any time, the credit rating on the notes, as determined by both Standard & Poor’s and Moody’s, equals or exceeds BBB- and Baa3, respectively, or any equivalent replacement ratings, we will not be subject to most of the restrictive covenants and certain events of default contained in the indenture governing the notes. As a result, you may have less credit protection than you will at the time the notes are issued. In the event that one or both of the ratings later drops below investment grade, we will thereafter again be subject to such restrictive covenants and events of default.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately \$491.9 million from the offering, after deducting the underwriters' discount and commissions and estimated offering expenses. We intend to use such net proceeds for general corporate purposes, which may include expansion capital expenditures and the repayment of indebtedness, including indebtedness that we expect to assume in connection with our planned acquisition of Switch and Data.

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CAPITALIZATION

The following table sets forth our cash, cash equivalents and investments and current portion of our indebtedness and our capitalization as of December 31, 2009:

- on an actual basis; and
- on an as adjusted basis to reflect the sale of the notes offered hereby, after deducting the underwriters' discount and commissions and estimated offering expenses as described in "Use of Proceeds".

This table should be read in conjunction with the section "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this prospectus. For pro forma information giving effect to the proposed acquisition by us of Switch and Data, see "Unaudited Pro forma Combined Consolidated Financial Statements."

| | As of December 31, 2009 | |
|--|-------------------------|-----------------------------|
| | Actual | As Adjusted ⁽¹⁾ |
| | (dollars in thousands) | |
| Cash, cash equivalents and investments ⁽²⁾ | \$ 604,367 | \$ 1,096,267 ⁽³⁾ |
| Current portion of capital lease and other financing obligations | \$ 6,452 | \$ 6,452 |
| Current portion of mortgage and loans payable | \$ 58,912 | \$ 58,912 |
| Long-term debt, net of current portion: | | |
| Capital lease and other financing obligations | \$ 154,577 | \$ 154,577 |
| Mortgage and loans payable | 371,322 | 371,322 |
| % senior notes due 2018 offered hereby ⁽⁴⁾ | — | 500,000 |
| 2.50% convertible subordinated notes due 2012 ⁽⁵⁾ | 222,943 | 222,943 |
| 3.00% convertible subordinated notes due 2014 ⁽⁶⁾ | 395,986 | 395,986 |
| 4.75% convertible subordinated notes due 2016 ⁽⁷⁾ | 274,777 | 274,777 |
| Total long-term debt | 1,419,605 | 1,919,605 |
| Total stockholders' equity | 1,182,483 | 1,182,483 |
| Total capitalization | \$ 2,602,088 | \$ 3,102,088 |

- (1) Excludes the effect of the proposed acquisition by Equinix of Switch and Data. See "Unaudited Pro Forma Combined Consolidated Condensed Financial Statements."
- (2) Amount includes \$9.8 million of long-term investments and \$248.5 million of short-term investments, which primarily consist of investments in U.S. government and agency obligations, money markets and corporate bonds.
- (3) As of December 31, 2009, after giving pro forma effect to the adjustments noted above and our planned acquisition of Switch and Data, cash, cash equivalents and investments would have been \$840.4 million.
- (4) The notes offered hereby may be offered with original issue discount. Any original issue discount would reduce the amount of net proceeds.
- (5) Our 2.50% convertible subordinated notes due 2012 were convertible into 2,231,475 shares of common stock as of December 31, 2009 and is presented net of discount of \$27.1 million on our consolidated balance sheet. Total principal outstanding for our 2.50% convertible subordinated notes due 2012 as of December 31, 2009 was \$250.0 million.
- (6) Our 3.00% convertible subordinated notes due 2014 were convertible into 2,944,551 shares of common stock as of December 31, 2009. Total principal outstanding for our 3.00% convertible subordinated notes due 2014 as of December 31, 2009 was \$396.0 million.

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- (7) Our 4.75% convertible subordinated notes due 2016 were convertible into 4,432,638 shares of common stock as of December 31, 2009 and is presented net of discount of \$99.0 million on our consolidated balance sheet. Total principal outstanding for our 4.75% convertible subordinated notes due 2016 as of December 31, 2009 was \$373.8 million.

UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma combined consolidated condensed financial statements have been prepared to give effect to the proposed acquisition by us of Switch and Data using the acquisition method of accounting with the assumptions and adjustments described in the accompanying notes to the unaudited pro forma combined consolidated condensed financial statements. These pro forma statements were prepared as if the merger described above had been completed as of January 1, 2008 for statements of operations purposes and as of December 31, 2009 for balance sheet purposes. The combined company will operate under the Equinix name.

The unaudited pro forma combined consolidated condensed financial statements are presented for illustrative purposes only and are not necessarily indicative of the financial position or results of operations that would have actually been reported had the acquisition and the related financing described above occurred on January 1, 2009 for statements of operation purposes and as of December 31, 2009 for balance sheet purposes, nor is it necessarily indicative of the future financial position or results of operations. The unaudited pro forma combined consolidated condensed financial statements include adjustments, which are based upon preliminary estimates, to reflect the allocation of the purchase price to the acquired assets and assumed liabilities of Switch and Data. The final allocation of the purchase price will be determined after the completion of the acquisition and will be based upon actual net tangible and intangible assets acquired as well as liabilities assumed. The preliminary purchase price allocation for Switch and Data is subject to revision as more detailed analysis is completed and additional information on the fair values of Switch and Data's assets and liabilities becomes available. Any change in the fair value of the net assets of Switch and Data will change the amount of the purchase price allocable to goodwill. Additionally, changes in Switch and Data's working capital, including the results of operations from December 31, 2009 through the date the transaction is completed, will change the amount of goodwill recorded. Furthermore, the final purchase price is dependent on the actual amount of Switch and Data common stock and vested employee equity awards outstanding on the date of closing as well as the Equinix share price on the date of closing. Final purchase accounting adjustments may differ materially from the pro forma adjustments presented here.

These unaudited pro forma combined consolidated condensed financial statements are based upon the respective historical consolidated financial statements of Equinix and Switch and Data and, in respect of Equinix's financial data, should be read in conjunction with the historical consolidated financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" of Equinix included elsewhere in this prospectus. The historical consolidated financial statements of Switch and Data have been extracted from the historical consolidated financial statements and related notes of Switch and Data included in its Annual Report on Form 10-K for the period ended December 31, 2009 filed with the SEC. Such historical consolidated financial statements and related notes are the sole responsibility of Switch and Data and have not been independently verified by Equinix or the underwriters.

**UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED
BALANCE SHEET
AS OF DECEMBER 31, 2009
(In thousands)**

| | Historical | | Pro Forma | | | |
|---|---------------------|-----------------------------|-------------------------|----------|--|---------------------|
| | Equinix | Switch and Data (Note 2) | Adjustments (Note 6) | Combined | | |
| ASSETS | | | | | | |
| Current assets: | | | | | | |
| Cash and cash equivalents | \$ 346,056 | \$ 28,528 | \$ (284,393) | (a) | | \$ 90,191 |
| Short-term investments | 248,508 | — | — | | | 248,508 |
| Accounts receivable, net | 64,767 | 13,930 | — | | | 78,697 |
| Current portion of deferred tax assets, net | 46,822 | — | — | | | 46,822 |
| Other current assets | 21,734 | 2,849 | — | | | 24,583 |
| Total current assets | 727,887 | 45,307 | (284,393) | | | 488,801 |
| Long-term investments | 9,803 | — | — | | | 9,803 |
| Property, plant and equipment, net | 1,808,115 | 297,312 | 164,508 | (b) | | 2,269,935 |
| Goodwill | 381,050 | 36,023 | 332,208 | (c) | | 749,281 |
| Intangible assets, net | 51,015 | 15,274 | 120,456 | (d) | | 186,745 |
| Deferred tax assets, net | 5,171 | — | (5,171) | (e) | | — |
| Other assets | 55,109 | 6,464 | (4,032) | (f) | | 57,541 |
| Total assets | <u>\$ 3,038,150</u> | <u>\$ 400,380</u> | <u>\$ 323,576</u> | | | <u>\$ 3,762,106</u> |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | | | | | |
| Current liabilities: | | | | | | |
| Accounts payable and accrued expenses | \$ 99,053 | \$ 23,741 | \$ 18,885 | (g) | | \$ 141,679 |
| Accrued property, plant and equipment | 109,876 | — | — | | | 109,876 |
| Current portion of capital lease and other financing obligations | 6,452 | 1,934 | — | | | 8,386 |
| Current portion of mortgage and loans payable | 58,912 | 14,250 | (14,250) | (h) | | 58,912 |
| Other current liabilities | 41,166 | 12,901 | (11,988) | (i) | | 42,079 |
| Total current liabilities | 315,459 | 52,826 | (7,353) | | | 360,932 |
| Capital lease and other financing obligations, less current portion | 154,577 | 58,364 | — | | | 212,941 |
| Mortgage and loans payable, less current portion | 371,322 | 128,250 | (128,250) | (h) | | 371,322 |
| Convertible debt, less current portion | 893,706 | — | — | | | 893,706 |
| Other liabilities | 120,603 | 28,112 | 70,225 | (j) | | 218,940 |
| Total liabilities | 1,855,667 | 267,552 | (65,378) | | | 2,057,841 |
| Stockholders' equity: | | | | | | |
| Total stockholders' equity | 1,182,483 | 132,828 | 388,954 | (k) | | 1,704,265 |
| Total liabilities and stockholders' equity | <u>\$ 3,038,150</u> | <u>\$ 400,380</u> | <u>\$ 323,576</u> | | | <u>\$ 3,762,106</u> |

The accompanying notes are an integral part of these unaudited pro forma combined consolidated condensed financial statements.

**UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED
STATEMENT OF OPERATIONS
FOR THE YEAR ENDED DECEMBER 31, 2009**
(In thousands, except per share data)

| | Historical | | Pro Forma | | Combined |
|---|------------|-----------------------------|-------------------------|-----|-------------|
| | Equinix | Switch and Data (Note 3) | Adjustments (Note 6) | | |
| Revenues | \$882,509 | \$ 205,438 | \$ — | | \$1,087,947 |
| Costs and operating expenses: | | | | | |
| Cost of revenues | 483,420 | 142,532 | 27,328 | (l) | 653,280 |
| Sales and marketing | 63,584 | 20,733 | 10,909 | (m) | 95,226 |
| General and administrative | 155,324 | 21,729 | 1,471 | (n) | 178,524 |
| Restructuring charges | (6,053) | — | — | | (6,053) |
| Acquisition costs | 5,155 | — | (4,091) | (o) | 1,064 |
| Total costs and operating expenses | 701,430 | 184,994 | 35,617 | | 922,041 |
| Income (loss) from operations | 181,079 | 20,444 | (35,617) | | 165,906 |
| Interest income | 2,384 | 56 | (1,649) | (p) | 791 |
| Interest expense | (74,232) | (15,775) | 11,735 | (q) | (78,272) |
| Other-than-temporary impairment loss on investments | (2,590) | — | — | | (2,590) |
| Other income (expense) | 2,387 | (3,063) | — | | (676) |
| Income (loss) before income taxes | 109,028 | 1,662 | (25,531) | | 85,159 |
| Income tax benefit (expense) | (39,597) | (1,254) | 9,761 | (r) | (31,090) |
| Net income (loss) | \$ 69,431 | \$ 408 | \$ (15,770) | | \$ 54,069 |
| Earnings per share: | | | | | |
| Basic earnings per share | \$ 1.80 | | | | \$ 1.23 |
| Weighted-average shares | 38,488 | | 5,395 | (s) | 43,883 |
| Diluted earnings per share | \$ 1.75 | | | | \$ 1.19 |
| Weighted-average shares | 39,676 | | 5,592 | (s) | 45,268 |

The accompanying notes are an integral part of these unaudited pro forma combined consolidated condensed financial statements.

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS**

The unaudited pro forma combined consolidated condensed financial statements included herein have been prepared pursuant to the rules and regulations of the SEC.

1. BASIS OF PRO FORMA PRESENTATION

In October 2009, the Company announced that it had entered into an agreement with 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 had 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. 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 prorated 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. The Company expects to close the Switch and Data Acquisition in the second quarter of 2010; however, the closing and its timing are subject to regulatory approval, including clearance under the HSR Act, as well as the satisfaction or waiver of closing conditions.

The unaudited pro forma combined consolidated condensed balance sheet as of December 31, 2009, was prepared by combining the historical audited consolidated condensed balance sheet data as of December 31, 2009 for Equinix and Switch and Data as if the Switch and Data Acquisition had been consummated on that date. Certain balance sheet reclassifications have been reflected in order to conform Switch and Data's balance sheet with the Company's balance sheet presentation. Refer to Note 2 for a discussion of these reclassification adjustments.

The unaudited pro forma combined consolidated condensed statement of operations for the year ended December 31, 2009 combines the results of operations of Equinix and Switch and Data as if the Switch and Data Acquisition had been consummated on January 1, 2009. Certain statement of operations reclassifications have been reflected in order to conform with the Company's statement of operations presentation. Refer to Note 3 for a discussion of these reclassification adjustments.

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

2. SWITCH AND DATA BALANCE SHEET

Switch and Data classified certain amounts differently than Equinix in their consolidated balance sheet. The following schedule summarizes the necessary adjustments to conform the Switch and Data consolidated balance sheet as of December 31, 2009 to Equinix's basis of presentation (in thousands):

| | As Reported Switch and Data | Adjustments | | As Revised Switch and Data |
|---|--------------------------------|-------------|------|-------------------------------|
| ASSETS | | | | |
| Current assets: | | | | |
| Cash and cash equivalents | \$ 28,528 | \$ — | | \$ 28,528 |
| Accounts receivable, net | 13,930 | — | | 13,930 |
| Other current assets | 2,849 | — | | 2,849 |
| Total current assets | 45,307 | — | | 45,307 |
| Property, plant and equipment, net | 297,312 | — | | 297,312 |
| Goodwill | 36,023 | — | | 36,023 |
| Intangible assets, net | 15,274 | — | | 15,274 |
| Other assets | 6,464 | — | | 6,464 |
| Total assets | <u>\$ 400,380</u> | <u>\$ —</u> | | <u>\$ 400,380</u> |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | | | |
| Current liabilities: | | | | |
| Accounts payable and accrued expenses | \$ 23,741 | \$ — | | \$ 23,741 |
| Derivative liability | 8,713 | (8,713) | (i) | — |
| Current portion of unearned revenue | 3,275 | (3,275) | (i) | — |
| Current portion of deferred rent | 336 | (336) | (i) | — |
| Current portion of customer security deposits | 577 | (577) | (i) | — |
| Current portion of capital lease and other financing obligations | 1,934 | — | | 1,934 |
| Current portion of mortgage and loans payable | 14,250 | — | | 14,250 |
| Other current liabilities | — | 12,901 | (i) | 12,901 |
| Total current liabilities | 52,826 | — | | 52,826 |
| Unearned revenue, less current portion | 1,506 | (1,506) | (ii) | — |
| Deferred rent, less current portion | 26,287 | (26,287) | (ii) | — |
| Customer security deposits, less current portion | 319 | (319) | (ii) | — |
| Capital lease and other financing obligations, less current portion | 58,364 | — | | 58,364 |
| Mortgage and loans payable, less current portion | 128,250 | — | | 128,250 |
| Other liabilities | — | 28,112 | (ii) | 28,112 |
| Total liabilities | <u>267,552</u> | <u>—</u> | | <u>267,552</u> |
| Stockholders' equity | | | | |
| Total stockholders' equity | <u>132,828</u> | <u>—</u> | | <u>132,828</u> |
| Total liabilities and stockholders' equity | <u>\$ 400,380</u> | <u>\$ —</u> | | <u>\$ 400,380</u> |

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

The adjustments presented above to Switch and Data's balance sheet are as follows:

(i) Reflects reclassification adjustments to move the following line items to other current liabilities (in thousands):

| | |
|---|------------------|
| Derivative liability | \$ 8,713 |
| Current portion of unearned revenue | 3,275 |
| Current portion of deferred rent | 336 |
| Current portion of customer security deposits | 577 |
| | <u>\$ 12,901</u> |

(ii) Reflects reclassification adjustments to move the following line items to other liabilities (in thousands):

| | |
|--|------------------|
| Unearned revenue, less current portion | \$ 1,506 |
| Deferred rent, less current portion | 26,287 |
| Customer security deposits, less current portion | 319 |
| | <u>\$ 28,112</u> |

3. SWITCH AND DATA STATEMENTS OF OPERATIONS

Switch and Data classified certain amounts differently than Equinix in their consolidated statement of operations. The following schedule summarizes the necessary adjustments to conform the Switch and Data consolidated statement of operations for the year ended December 31, 2009 to Equinix's basis of presentation (in thousands):

| | As Reported Switch and Data | Adjustments | As Revised Switch and Data |
|------------------------------------|--------------------------------|--------------|-------------------------------|
| Revenues | \$ 205,438 | \$ — | \$ 205,438 |
| Costs and operating expenses: | | | |
| Cost of revenues | 103,133 | 39,399 (i) | 142,532 |
| Sales and marketing | 20,733 | — | 20,733 |
| General and administrative | 18,955 | 2,774 (i) | 21,729 |
| Depreciation and amortization | 41,473 | (41,473) (i) | — |
| Lease litigation settlement | 700 | (700) (i) | — |
| Total costs and operating expenses | 184,994 | — | 184,994 |
| Income from operations | 20,444 | — | 20,444 |
| Interest income | 56 | — | 56 |
| Interest expense | (15,775) | — | (15,775) |
| Other expense | (3,063) | — | (3,063) |
| Income before income taxes | 1,662 | — | 1,662 |
| Income tax expense | (1,254) | — | (1,254) |
| Net income | <u>\$ 408</u> | <u>\$ —</u> | <u>\$ 408</u> |

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

The adjustments presented above to Switch and Data's statements of operations are as follows:

- (i) Reflects a reclassification of depreciation and amortization to both cost of revenues and general and administrative expenses and a reclassification of lease litigation settlement to general and administrative expenses.

4. PURCHASE PRICE—SWITCH AND DATA

The following represents the preliminary allocation of the purchase price over the historical net book values of the acquired assets and assumed liabilities of Switch and Data as of December 31, 2009, and is for illustrative purposes only. Actual fair values will be based on financial information as of the acquisition date.

The unaudited pro forma combined consolidated condensed financial statements reflect an estimated purchase price of approximately \$663,008,000, consisting of (a) a cash payment totaling approximately \$132,460,000, representing a payment of \$19.06 per share for 20% of Switch and Data's total common stock outstanding as of December 31, 2009, (b) a total of approximately 5,395,000 shares of the Company's common stock, representing the issuance of 0.19409 shares of Equinix common stock for 80% of Switch and Data's total common stock outstanding as of December 31, 2009, with a fair value of approximately \$518,931,000 based on the closing price of Equinix common stock as of February 17, 2010 and (c) fair value of approximately \$11,617,000 attributed to vested Switch and Data employee equity awards which Equinix will assume. The final purchase price is dependent on the actual amount of Switch and Data common stock and vested employee equity awards outstanding on the date of closing as well as the Equinix share price on the date of closing. The final purchase price will be determined upon completion of the Switch and Data Acquisition.

Under the acquisition method of accounting, the total estimated purchase price is allocated to Switch and Data's net tangible and intangible assets based upon their estimated fair value as of the date of completion of the merger. Based upon the estimated purchase price and the preliminary valuation, the preliminary purchase price allocation, which is subject to change based on Equinix's final analysis, is as follows (in thousands):

| | |
|---|-------------------|
| Cash and cash equivalents | \$ 28,528 |
| Accounts receivable | 13,930 |
| Other current assets | 2,849 |
| Property and equipment | 461,820 |
| Goodwill | 368,231 |
| Intangible asset—customer contracts | 114,540 |
| Intangible asset—tradenames | 4,240 |
| Intangible asset—leases | 16,950 |
| Other assets | 2,432 |
| Total assets acquired | 1,013,520 |
| Accounts payable and accrued expenses | (23,741) |
| Current portion of capital leases | (1,934) |
| Current portion of loan payable | (14,250) |
| Other current liabilities | (9,626) |
| Capital leases, less current portion | (58,364) |
| Loan payable | (128,250) |
| Unfavorable leases | (2,100) |
| Deferred tax liability | (74,802) |
| Other liabilities | (26,606) |
| Estimated Switch and Data transaction costs payable | (10,839) |
| Net assets acquired | <u>\$ 663,008</u> |

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

A preliminary estimate of \$114,540,000 has been allocated to customer contracts, an intangible asset with an estimated useful life of approximately 11 years. A preliminary estimate of \$4,240,000 has been allocated to tradenames with an estimated life of approximately 8 years. A preliminary estimate of \$16,950,000 has been allocated to favorable leases with an estimated life of approximately 7 years. A preliminary estimate of \$2,100,000 has been allocated to unfavorable lease liability with an estimated life of approximately 7 years.

A preliminary estimate of \$368,231,000 has been allocated to goodwill. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. Goodwill will not be amortized and will be tested for impairment at least annually. The preliminary purchase price allocation for Switch and Data is subject to revision as more detailed analysis is completed and additional information on the fair values of Switch and Data's assets and liabilities becomes available. Any changes in the fair value of the net assets of Switch and Data will change the amount of the purchase price allocable to goodwill. Additionally, changes in Switch and Data's working capital, including the results of operations from December 31, 2009 through the date the transaction is completed, will also change the amount of goodwill recorded. Final purchase accounting adjustments may therefore differ materially from the pro forma adjustments presented here.

There were no historical transactions between Equinix and Switch and Data. Certain reclassifications have been made to conform Switch and Data's historical amounts to Equinix's financial statement presentation.

The pro forma adjustments do not reflect any integration adjustments to be incurred in connection with the acquisition or operating efficiencies and cost savings that may be achieved with respect to the combined entity as these costs are not directly attributable to the purchase agreement.

5. SWITCH AND DATA DEBT

As a result of the Switch and Data Acquisition, Switch and Data's outstanding debt will become due and payable and will be required to be repaid or refinanced prior to or concurrent with completion of the Switch and Data Acquisition due to change of control provisions contained in Switch and Data's credit agreement. Equinix expects to repay or refinance Switch and Data's outstanding debt prior to or concurrent with the completion of the Switch and Data Acquisition. As of December 31, 2009, the aggregate principal amount of Switch and Data's outstanding debt was \$142,500,000 and accrued interest associated with this debt totaled \$720,000. In addition, Switch and Data had entered into an interest rate swap agreement in connection with this debt and had a derivative liability totaling \$8,713,000 as of December 31, 2009. The cost to unwind this interest rate swap agreement would be the full payment of this derivative liability. For the purposes of these unaudited pro forma combined consolidated condensed financial statements, Equinix will reflect the full repayment of Switch and Data's outstanding debt and associated interest rate swap agreement.

6. PRO FORMA ADJUSTMENTS

The accompanying unaudited pro forma combined financial statements have been prepared as if the transactions described above were completed on December 31, 2009 for balance sheet purposes and as of January 1, 2009 for statement of operations purposes.

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

The unaudited pro forma combined consolidated condensed balance sheet gives effect to the following pro forma adjustments:

- (a) Represents the following adjustments to cash and cash equivalents (in thousands):

| | |
|---|---------------------|
| Cash portion of Switch and Data Acquisition purchase price | \$ (132,460) |
| Repayment of Switch and Data's outstanding debt | (142,500) |
| Payment of accrued interest on Switch and Data's outstanding debt | (720) |
| Cost to unwind Switch and Data's interest rate swap agreement in connection with Switch and Data's outstanding debt | (8,713) |
| | <u>\$ (284,393)</u> |

- (b) Represents an adjustment to Switch and Data's property, plant and equipment to fair value.

- (c) Represents goodwill of \$368,231,000 created in the Switch and Data Acquisition, offset by the \$36,023,000 write-off of Switch and Data's existing goodwill on its balance sheet.

- (d) Represents the following adjustments to intangible assets, net (in thousands):

| | |
|--|-------------------|
| Value attributed to new intangible asset—customer contracts | \$ 114,540 |
| Value attributed to new intangible asset—tradenames | 4,240 |
| Value attributed to new intangible asset—favorable leases | 16,950 |
| Write-off of Switch and Data's existing intangible assets, net | (15,274) |
| | <u>\$ 120,456</u> |

- (e) Represents the reduction of Equinix's non-current deferred tax assets as a result of the recognition of the non-current deferred tax liability created in the Switch and Data Acquisition. The remaining non-current deferred tax liability created in the acquisition of Switch and Data is recorded in other liabilities—see adjustment (j) below.

- (f) Represents a fair value adjustment to write-off Switch and Data's debt issuance costs.

- (g) Represents the following adjustments to accounts payable and accrued expenses (in thousands):

| | |
|---|-----------------|
| Accrual for Equinix's Switch and Data transaction costs | \$ 8,766 |
| Accrual for Switch and Data's transaction costs | 10,839 |
| Payment of accrued interest on Switch and Data's outstanding debt | (720) |
| | <u>\$18,885</u> |

- (h) Represents repayment of Switch and Data's outstanding debt.

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

(i) Represents the following adjustments to other current liabilities (in thousands):

| | |
|---|--------------------|
| Write-off of Switch and Data's current unearned revenue with no remaining performance obligations | \$ (3,275) |
| Payment of derivative liability in connection with Switch and Data's interest rate swap agreement | (8,713) |
| | <u>\$ (11,988)</u> |

(j) Represents the following adjustments to other liabilities (in thousands):

| | |
|---|------------------|
| Value attributed to Switch and Data's unfavorable leases | \$ 2,100 |
| Recognition of non-current deferred tax liability created in the Switch and Data Acquisition | 69,631 |
| Write-off of Switch and Data's non-current unearned revenue with no remaining performance obligations | (1,506) |
| | <u>\$ 70,225</u> |

(k) Represents the following adjustments to stockholders' equity (in thousands):

| | |
|---|-------------------|
| Elimination of Switch and Data's historical stockholders' equity | \$ (132,828) |
| Fair value of Equinix common stock issued in connection with the Switch and Data purchase price | 518,931 |
| Fair value of vested Switch and Data employee equity awards assumed by Equinix | 11,617 |
| Accrual for Equinix's Switch and Data transaction costs | (8,766) |
| | <u>\$ 388,954</u> |

The unaudited pro forma combined consolidated condensed statements of operation give effect to the following pro forma adjustments for the year ended December 31, 2009:

(l) Represents (i) additional net depreciation expense in connection with both the fair value adjustment to Switch and Data's property, plant and equipment and conforming Switch and Data's depreciable life estimates for its property, plant and equipment to Equinix's depreciable life estimates, (ii) amortization expense in connection with the favorable lease intangible asset and (iii) rent expense savings as a result of the unfavorable lease liability amortization recorded in connection with the Switch and Data Acquisition as noted below (in thousands):

| | |
|--|-----------------|
| Additional depreciation expense in connection with Switch and Data acquisition | \$25,280 |
| Switch and Data favorable lease intangible amortization | 2,351 |
| Switch and Data unfavorable lease liability amortization | (303) |
| | <u>\$27,328</u> |

**NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED
CONDENSED FINANCIAL STATEMENTS—(Continued)**

- (m) Represents the amortization of the customer contract intangible over an estimated useful life of approximately 11 years.
- (n) Represents (i) additional net depreciation expense in connection with both the fair value adjustment to Switch and Data's property, plant and equipment and conforming Switch and Data's depreciable life estimates for its property, plant and equipment to Equinix's depreciable life estimates and (ii) amortization of the tradename intangible asset in connection with the Switch and Data Acquisition as noted below (in thousands):

| | |
|--|-----------------|
| Additional depreciation expense in connection with Switch and Data acquisition | \$ 902 |
| Switch and Data tradename intangible amortization | 569 |
| | <u>\$ 1,471</u> |

- (o) Represents the removal of Equinix transaction costs in connection with the Switch and Data Acquisition incurred in its historical results. Such non-recurring transaction costs are to be excluded from the unaudited pro forma combined consolidated condensed statement of operations pursuant to SEC regulations. The remaining acquisition costs reflected for the year ended December 31, 2009 relate to acquisition activity not related to Switch and Data.
- (p) Represents a reduction of interest income assuming the cash payments outlined in adjustment (a) above occurred as of January 1, 2009.
- (q) Represents interest expense savings assuming Switch and Data's outstanding debt was repaid and the associated interest rate swaps were unwound as of January 1, 2009.
- (r) Primarily represents the reversal of deferred tax liability associated with the purchase accounting adjustments recorded as a result of the Switch and Data Acquisition based on the effective statutory tax rates.
- (s) Represents the shares of Equinix common stock issued in connection with the Switch and Data Acquisition as well as the estimated impact of Switch and Data employee equity awards assumed for diluted earnings per share purposes as if they were outstanding as of January 1, 2009.

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SELECTED CONSOLIDATED FINANCIAL DATA

You should read the following selected historical consolidated financial data presented below in conjunction with the section “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” our consolidated financial statements and related notes and other financial information included elsewhere in this prospectus. The selected consolidated financial data in this section are not intended to replace the consolidated financial statements and are qualified in their entirety by the consolidated financial statements and related notes included elsewhere in this prospectus.

The consolidated statements of operations data for the three years ended December 31, 2009 and the consolidated balance sheets data as of December 31, 2009 and 2008 are derived from our audited consolidated financial statements included elsewhere in this prospectus. The consolidated statements of operations data for the years ended December 31, 2006 and 2005 and the consolidated balance sheets data as of December 31, 2007, 2006 and 2005 are derived from our audited consolidated financial statements not included in this prospectus. Historical results are not necessarily indicative of the results to be expected in the future.

| | Years ended December 31, | | | | |
|---|--------------------------|-------------------|-------------------|-------------------|--------------------|
| | 2009 | 2008 | 2007 | 2006 | 2005 |
| (dollars in thousands, except per share data) | | | | | |
| Consolidated Statement of Operations Data: | | | | | |
| Revenues | \$ 882,509 | \$ 704,680 | \$ 419,442 | \$ 286,915 | \$ 221,057 |
| Costs and operating expenses: | | | | | |
| Cost of revenues | 483,420 | 414,799 | 263,768 | 188,379 | 158,354 |
| Sales and marketing | 63,584 | 66,913 | 40,719 | 32,619 | 20,552 |
| General and administrative | 155,324 | 146,564 | 105,794 | 72,123 | 45,110 |
| Restructuring charges | (6,053) | 3,142 | 407 | 1,527 | 33,814 |
| Acquisition costs | 5,155 | — | — | — | — |
| Gains on asset sales | — | — | (1,338) | (9,647) | — |
| Total costs and operating expenses | <u>701,430</u> | <u>631,418</u> | <u>409,350</u> | <u>285,001</u> | <u>257,830</u> |
| Income (loss) from operations | 181,079 | 73,262 | 10,092 | 1,914 | (36,773) |
| Interest income | 2,384 | 8,940 | 15,406 | 6,627 | 3,584 |
| Interest expense | (74,232) | (61,677) | (32,014) | (14,630) | (8,905) |
| Other-than-temporary impairment loss on investments | (2,590) | (1,527) | — | — | — |
| Other income (expense) | 2,387 | 1,307 | 3,047 | (245) | 25 |
| Loss on debt extinguishment and conversion | — | — | (5,949) | — | — |
| Income tax benefit (expense) | (39,597) | 87,619 | (473) | (439) | (543) |
| Cumulative effect of a change in accounting principle | — | — | — | 376 | — |
| Net income (loss) | <u>\$ 69,431</u> | <u>\$ 107,924</u> | <u>\$ (9,891)</u> | <u>\$ (6,397)</u> | <u>\$ (42,612)</u> |
| Earnings (loss) per share: | | | | | |
| Basic | <u>\$ 1.80</u> | <u>\$ 2.91</u> | <u>\$ (0.30)</u> | <u>\$ (0.22)</u> | <u>\$ (1.78)</u> |
| Weighted average shares—basic | <u>38,488</u> | <u>37,120</u> | <u>32,595</u> | <u>28,796</u> | <u>23,956</u> |
| Diluted | <u>\$ 1.75</u> | <u>\$ 2.79</u> | <u>\$ (0.30)</u> | <u>\$ (0.22)</u> | <u>\$ (1.78)</u> |
| Weighted average shares—diluted | <u>39,676</u> | <u>41,582</u> | <u>32,595</u> | <u>28,796</u> | <u>23,956</u> |
| Other Financial Data⁽¹⁾: | | | | | |
| Net cash provided by operating activities | \$ 355,492 | \$ 267,558 | \$ 120,020 | \$ 75,412 | \$ 67,595 |
| Net cash used in investing activities | (558,178) | (478,040) | (1,054,725) | (158,470) | (108,722) |
| Net cash provided by financing activities | 323,598 | 145,106 | 1,145,013 | 46,107 | 134,611 |

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| | As of December 31, | | | | |
|--|--------------------|------------|------------|------------|------------|
| | 2009 | 2008 | 2007 | 2006 | 2005 |
| Consolidated Balance Sheet Data: | | | | | |
| Cash, cash equivalents and short-term and long-term investments | \$ 604,367 | \$ 307,945 | \$ 383,900 | \$ 156,481 | \$ 188,855 |
| Accounts receivable, net | 64,767 | 66,029 | 60,089 | 26,864 | 17,237 |
| Property, plant and equipment, net | 1,808,115 | 1,492,830 | 1,164,613 | 546,395 | 438,790 |
| Total assets | 3,038,150 | 2,434,736 | 2,182,296 | 771,832 | 680,997 |
| Capital lease and other financing obligations, excluding current portion | 154,577 | 133,031 | 93,604 | 92,722 | 94,653 |
| Mortgage and loans payable, excluding current portion | 371,322 | 386,446 | 313,915 | 96,746 | 58,841 |
| Convertible debt, excluding current portion | 893,706 | 608,510 | 631,104 | 86,250 | 86,250 |
| Total stockholders' equity | 1,182,483 | 916,661 | 861,992 | 355,028 | 288,673 |

- (1) For a discussion of our primary non-GAAP metric, adjusted EBITDA, see our non-GAAP financial measures discussion in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.

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

You should read the following discussion of our financial condition and results of operations in conjunction our consolidated financial statements and related notes included elsewhere in this prospectus. 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" and "Risk Factors" elsewhere in this prospectus. All forward-looking statements in this document are based on information available to us as of the date hereof 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 January 2009, we adopted a FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) and a FASB standard for instruments granted in share-based payment transactions that are considered participating securities and, therefore, should be included in the calculation of earnings per share, or EPS. These FASB standards were applied retrospectively; as a result, we adjusted our previously issued comparative consolidated financial statements. See "Adoption of Recent Accounting Pronouncements and Adjusted Consolidated Financial Statements" in Note 1 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

During the year ended December 31, 2009, we assessed and changed the estimated useful lives of certain of our property, plant and equipment. This change is accounted for as a change in accounting estimate on a prospective basis effective July 1, 2009. See "Property, Plant and Equipment" in Note 1 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

In October 2009, as more fully described in Note 1 of Notes to Consolidated Financial Statements included elsewhere in this prospectus, 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. The Switch and Data acquisition, which is expected to close in the second quarter of 2010, subject to regulatory approval, including clearance under the HSR Act, as well as the satisfaction or waiver of closing conditions, will have a significant impact on our financial position, results of operations and cash flows.

Overview

We provide global data center services that protect and connect the world's most valued information assets. Global enterprises, financial services companies, and content and network service providers rely upon our leading insight and our 49 data centers in 18 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. We offer the following data center services: premium data center colocation, interconnection and exchange services, and outsourced IT infrastructure services. As of December 31, 2009, 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 entered Europe in September 2007 through our acquisition of IXXEurope Plc, or IXXEurope, headquartered in London, U.K. We refer to this transaction as the IXXEurope acquisition. In February 2008, we acquired Virtu Secure Webservices B.V., or Virtu, based in the Netherlands, to supplement our European operations. We refer to this transaction as the Virtu acquisition. In July 2009, we acquired Upminster GmbH, or Upminster, based in Germany, to further supplement our European operations. We refer to this transaction as the Upminster acquisition.

We leverage our global data centers in 18 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 2,612 as of December 31, 2009 versus 2,272 as of December 31, 2008, an increase of 15%. 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 79% as of December 31, 2009 versus approximately 81% as of December 31, 2008; 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 85% as of December 31, 2009. 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

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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 our 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 of 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 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.

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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.

Results of Operations

Our results of operations for the year ended December 31, 2007 include the operations of IXEurope from September 14, 2007 to December 31, 2007. Our results of operations for the year ended December 31, 2008 include the operations of Virtu from February 5, 2008 to December 31, 2008. Our results of operations for the year ended December 31, 2009 include the operations of Upminster from July 22, 2009 to December 31, 2009.

Years Ended December 31, 2009 and 2008

Revenues. Our revenues for the years ended December 31, 2009 and 2008 were generated from the following revenue classifications and geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|------------------------|--------------------------|-------------|------------------|-------------|------------------|------------|
| | 2009 | % | 2008 | % | \$ | % |
| U.S.: | | | | | | |
| Recurring revenues | \$515,780 | 59% | \$423,940 | 60% | \$ 91,840 | 22% |
| Non-recurring revenues | 19,709 | 2% | 18,863 | 3% | 846 | 4% |
| | <u>535,489</u> | <u>61%</u> | <u>442,803</u> | <u>63%</u> | <u>92,686</u> | <u>21%</u> |
| Europe: | | | | | | |
| Recurring revenues | 212,635 | 24% | 165,669 | 24% | 46,966 | 28% |
| Non-recurring revenues | 15,501 | 2% | 11,833 | 1% | 3,668 | 31% |
| | <u>228,136</u> | <u>26%</u> | <u>177,502</u> | <u>25%</u> | <u>50,634</u> | <u>29%</u> |
| Asia-Pacific: | | | | | | |
| Recurring revenues | 113,434 | 12% | 77,554 | 11% | 35,880 | 46% |
| Non-recurring revenues | 5,450 | 1% | 6,821 | 1% | (1,371) | (20%) |
| | <u>118,884</u> | <u>13%</u> | <u>84,375</u> | <u>12%</u> | <u>34,509</u> | <u>41%</u> |
| Total: | | | | | | |
| Recurring revenues | 841,849 | 95% | 667,163 | 95% | 174,686 | 26% |
| Non-recurring revenues | 40,660 | 5% | 37,517 | 5% | 3,143 | 8% |
| | <u>\$882,509</u> | <u>100%</u> | <u>\$704,680</u> | <u>100%</u> | <u>\$177,829</u> | <u>25%</u> |

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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 year ended December 31, 2009, we recorded \$67.7 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 Chicago, Los Angeles, New York, Silicon Valley and Washington, D.C. metro areas, which are expected to open during 2010.

Europe Revenues. Our revenues from the United Kingdom, the largest revenue contributor in the Europe region, represented approximately 36% and 38%, respectively, of the regional revenues for the years ended December 31, 2009 and 2008. 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 year ended December 31, 2009, we recorded approximately \$49.4 million of revenue from our recently-opened IBX data centers or IBX data center expansions in the Amsterdam, Frankfurt, London 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 Geneva, London, Paris and Zurich metro areas, which are expected to open during the first half of 2010.

Asia-Pacific Revenues. Our revenues from Singapore, the largest revenue contributor in the Asia-Pacific region, represented approximately 36% and 38%, respectively, of the regional revenues for the years ended December 31, 2009 and 2008. 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, as well as selective price increases in each of our IBX markets. During the year ended December 31, 2009, we recorded approximately \$25.7 million of revenue generated from our IBX data centers or IBX data center expansions in the Hong Kong, Singapore and Sydney metro areas. The decrease in Asia-Pacific non-recurring revenue was primarily due to higher revenue from equipment resales in 2008. 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 data centers or IBX data center expansions.

Cost of Revenues. Our cost of revenues for the years ended December 31, 2009 and 2008 were split among the following geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|--------------|--------------------------|-------------|------------------|-------------|-----------------|------------|
| | 2009 | % | 2008 | % | \$ | % |
| U.S. | \$269,242 | 56% | \$238,583 | 57% | \$30,659 | 13% |
| Europe | 144,875 | 30% | 122,658 | 30% | 22,217 | 18% |
| Asia-Pacific | 69,303 | 14% | 53,558 | 13% | 15,745 | 29% |
| Total | <u>\$483,420</u> | <u>100%</u> | <u>\$414,799</u> | <u>100%</u> | <u>\$68,621</u> | <u>17%</u> |

| | Years ended December 31, | |
|--|--------------------------|------|
| | 2009 | 2008 |
| <i>Cost of revenues as a percentage of revenues:</i> | | |
| U.S. | 50% | 54% |
| Europe | 64% | 69% |
| Asia-Pacific | 58% | 63% |
| Total | 55% | 59% |

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U.S. Cost of Revenues. U.S. cost of revenues for the years ended December 31, 2009 and 2008 included \$99.3 million and \$91.9 million, respectively, of depreciation expense. Growth in depreciation expense of \$14.5 million was due to our IBX data center expansion activity; however, this growth was partially offset by a \$7.1 million decrease in depreciation expense as we revised the estimated useful lives of certain of our property, plant and equipment during the year ended December 31, 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 \$9.8 million in rent and facility costs, (ii) an increase of \$7.9 million in utility costs as a result of increased customer installations and (iii) \$5.7 million in higher compensation costs, including general salaries, bonuses and headcount growth (308 U.S. employees as of December 31, 2009 versus 289 as of December 31, 2008). 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 years ended December 31, 2009 and 2008 included \$37.1 million and \$33.5 million, respectively, of depreciation expense. Growth in depreciation expense of \$4.1 million was primarily due to our IBX data center expansion activity; however, this growth was partially offset by a \$523,000 decrease in depreciation expense as we revised the estimated useful lives of certain of our property, plant and equipment during the year ended December 31, 2009. In the fourth quarter of 2009, we recorded a \$4.2 million decrease in depreciation expense as an out-of-period adjustment related to incorrectly depreciating certain assets. This \$4.2 million out-of-period adjustment represents the correction of errors attributable to the nine months ended September 30, 2009 and the years ended December 31, 2008 and 2007, which we have concluded were not material to any previously-reported historical quarterly periods or results of operations for the nine months ended September 30, 2009 and to any previously-reported historical annual or quarterly periods for the years ended December 31, 2008 or 2007. 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 \$11.0 million of utility costs arising from increased customer installations and revenues attributed to customer growth and (ii) \$3.4 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 years ended December 31, 2009 and 2008 included \$24.4 million and \$17.6 million, respectively, of depreciation expense. Growth in depreciation expense of \$11.2 million was primarily due to our IBX data center expansion activity; however, this growth was partially offset by a \$4.4 million decrease in depreciation expense as we revised the estimated useful lives of certain of our property, plant and equipment during the year ended December 31, 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, including (i) \$3.9 million of higher utility costs as a result of increased customer installations and (ii) \$2.2 million of higher rent and facility costs. 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 years ended December 31, 2009 and 2008 were split among the following geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|--------------|--------------------------|-------------|-----------------|-------------|------------------|-------------|
| | 2009 | % | 2008 | % | \$ | % |
| U.S. | \$35,900 | 56% | \$38,219 | 57% | \$(2,319) | (6%) |
| Europe | 17,755 | 28% | 19,331 | 29% | (1,576) | (8%) |
| Asia-Pacific | 9,929 | 16% | 9,363 | 14% | 566 | 6% |
| Total | <u>\$63,584</u> | <u>100%</u> | <u>\$66,913</u> | <u>100%</u> | <u>\$(3,329)</u> | <u>(5%)</u> |

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| | Years ended December 31, | |
|--|-----------------------------|------|
| | 2009 | 2008 |
| <i>Sales and marketing expenses as a percentage of revenues:</i> | | |
| U.S. | 7% | 9% |
| Europe | 8% | 11% |
| Asia-Pacific | 8% | 11% |
| Total | 7% | 9% |

U.S. Sales and Marketing Expenses. The decrease in our U.S. sales and marketing expenses was primarily due to \$1.6 million of higher expenditures related to our branding initiatives in 2008. While we experienced an overall reduction in sales and marketing costs year over year, 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 expect them to decrease.

Europe Sales and Marketing Expenses. The decrease in our Europe sales and marketing expenses was primarily due to \$1.5 million of lower bad debt expense. While we experienced an overall reduction in sales and marketing costs year over year, we generally expect Europe sales and marketing expenses to increase as we continue to grow our business; however, as a percentage of revenues, we expect them to decrease.

Asia-Pacific Sales and Marketing Expenses. The increase in our Asia-Pacific sales and marketing expenses was primarily due to higher compensation costs, including general salaries, bonuses and stock-based compensation expense. We expect Asia-Pacific sales and marketing expenses to increase as we continue to grow our business; however, as a percentage of revenues, we expect them to decrease.

General and Administrative Expenses. Our general and administrative expenses for the years ended December 31, 2009 and 2008 were split among the following geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|--------------|--------------------------|-------------|------------------|-------------|----------------|-----------|
| | 2009 | % | 2008 | % | \$ | % |
| U.S. | \$104,141 | 67% | \$ 96,657 | 66% | \$7,484 | 8% |
| Europe | 33,240 | 21% | 34,071 | 23% | (831) | (2%) |
| Asia-Pacific | 17,943 | 12% | 15,836 | 11% | 2,107 | 13% |
| Total | <u>\$155,324</u> | <u>100%</u> | <u>\$146,564</u> | <u>100%</u> | <u>\$8,760</u> | <u>6%</u> |

| | Years ended December 31, | |
|---|-----------------------------|------|
| | 2009 | 2008 |
| <i>General and administrative expenses as a percentage of revenues:</i> | | |
| U.S. | 19% | 22% |
| Europe | 15% | 19% |
| Asia-Pacific | 15% | 19% |
| Total | 18% | 21% |

U.S. General and Administrative Expenses. The increase in our U.S. general and administrative expenses was primarily due to \$8.5 million of higher compensation costs, including general salaries, bonuses and headcount growth (298 U.S. general and administrative employees as of December 31, 2009 versus 259 as of December 31, 2008). 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 expect them to decrease.

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Europe General and Administrative Expenses. The decrease in our Europe general and administrative expenses was primarily due to a \$3.1 million one-time stock-based compensation charge due to equity award modifications related to the resignation of two senior officers in Europe during the year ended December 31, 2008, partially offset by higher compensation costs, including general salaries, bonuses and headcount growth (109 Europe general and administrative employees as of December 31, 2009 versus 80 as of December 31, 2008). 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 expect them to decrease.

Asia-Pacific General and Administrative Expenses. The increase in our Asia-Pacific general and administrative expenses was primarily due to \$1.2 million of higher professional fees including legal fees. 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 expect them to decrease.

Acquisition Costs. During the year ended December 31, 2009, we recorded acquisition costs totaling \$5.2 million, primarily related to the Upminster acquisition and the agreement to acquire Switch and Data. During the year ended December 31, 2008, we did not expense direct acquisition costs pursuant to the accounting standard applicable to that period. We expect our acquisition costs to increase significantly in 2010 as we incur additional expenses to complete the Switch and Data acquisition.

Restructuring Charges. During the year ended December 31, 2009, we recorded reductions of restructuring charges totaling \$6.1 million, primarily due to 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 data center. Our excess space lease in the New York metro area remains abandoned and continues to carry a restructuring charge. During the year ended December 31, 2008, we recorded a restructuring charge adjustment of \$3.1 million from revised sublease assumptions on the two excess space leases in the Los Angeles and New York metro areas as a result of new information becoming available. We are contractually committed to the lease of excess space in the New York metro area through 2015.

Interest Income. Interest income decreased to \$2.4 million for the year ended December 31, 2009 from \$8.9 million for the year ended December 31, 2008. Interest income decreased primarily due to lower yields on invested balances. The average yield for the year ended December 31, 2009 was 0.58% versus 2.77% for the year ended December 31, 2008. We expect our interest income to remain at these low levels for the foreseeable future due to a low interest rate environment and as we continue to utilize our cash to finance our expansion activities.

Interest Expense. Interest expense was \$74.2 million and \$61.7 million, respectively, for the years ended December 31, 2009 and 2008. The increase in interest expense was primarily due to higher loan balances as a result of loan drawdowns and new financings entered into during 2008 and 2009 consisting of (i) our \$373.8 million 4.75% convertible subordinated notes offering in June 2009, (ii) our Netherlands financing, of which \$9.3 million was outstanding as of December 31, 2009 with an approximate interest rate of 4.31% per annum as compared to \$6.5 million outstanding as of December 31, 2008 with an approximate interest rate of 4.18% per annum and (iii) our Singapore financing, which we obtained in September 2009, of which \$24.6 million was outstanding as of December 31, 2009 with an approximate interest rate of 4.20% per annum. The increase was partially offset by higher capitalized interest expense, repayment of some loans and the partial conversions of certain of our convertible subordinated debentures in November 2008 and June 2009. During the years ended December 31, 2009 and 2008, we capitalized \$12.9 million and \$7.9 million, respectively, of interest expense to construction in progress. Going forward, we expect to incur higher interest expense as we fully utilize or recognize the full impact of our existing financings, including the \$373.8 million 4.75% convertible subordinated notes offering and the Singapore financing, although this will be partially offset by capitalized interest, which we expect to increase in 2010 as we intend to embark on more expansion projects than in prior years. We may also incur additional indebtedness to support our growth, resulting in further interest expense.

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Other-Than-Temporary Impairment Loss On Investments. For the years ended December 31, 2009 and 2008, we recorded \$2.6 million and \$1.5 million, respectively, of other-than-temporary impairment losses on one of our money market accounts as more fully described in Note 5 of Notes to Consolidated Financial Statements included elsewhere in this prospectus. Additionally, in January 2010, we received an additional distribution of \$3.4 million from this same money market account, which will be recorded as a recovery of other-than-temporary impairment losses in the first quarter of 2010.

Other Income (Expense). For the years ended December 31, 2009 and 2008, we recorded \$2.4 million and \$1.3 million of other income, respectively, primarily attributable to foreign currency exchange gains during the periods.

Income Taxes. For the year ended December 31, 2009, we recorded \$39.6 million of income tax expense. The tax expense recorded in the year ended December 31, 2009 was primarily a result of applying the effective statutory tax rates to the operating income adjusted for permanent tax adjustments for the period, partially offset by income tax benefits due to the release of valuation allowances of \$3.1 million and \$5.2 million associated with our Hong Kong and U.K. operations, respectively. For the year ended December 31, 2008, we recorded \$87.6 million of income tax benefits primarily due to recognition of deferred tax assets of \$85.1 million and \$6.1 million associated with our U.S. and Australian operations, respectively, partially offset by tax provisions from other jurisdictions. Going forward, we expect the effective blended tax rates to be consistent with 2009.

As of December 31, 2009, we had total net deferred tax assets of \$25.2 million consisting primarily of favorable temporary differences and net operating loss carryforwards, the majority of which are attributable to our U.S. operations. Approximately \$71.0 million of future pre-tax earnings for financial reporting purposes would need to be generated to realize these favorable temporary differences associated with our U.S. operations, which we believe is achievable based on our current level of pre-tax earnings and our profitability forecast for future years. Historically, the difference between the pretax earnings for financial reporting purposes and the taxable income for income tax purposes in our U.S. operations has primarily included temporary adjustments such as depreciation expense, stock-based compensation and capital lease expenses. The temporary differences either increase or decrease the pre-tax earnings for financial reporting purposes to arrive at the taxable income for income tax purposes. However, it is expected that these temporary differences will generally increase the taxable income in the foreseeable future. The majority of the net operating loss carryforwards for income tax purposes in our U.S. operations do not start to expire until 2023. For further information on our income taxes, refer to Note 13 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

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Years Ended December 31, 2008 and 2007

Revenues. Our revenues for the years ended December 31, 2008 and 2007 were generated from the following revenue classifications and geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|------------------------|--------------------------|-------------|-------------------|-------------|-------------------|-------------|
| | 2008 | % | 2007 | % | \$ | % |
| U.S: | | | | | | |
| Recurring revenues | \$ 423,940 | 60% | \$ 311,188 | 74% | \$ 112,752 | 36% |
| Non-recurring revenues | 18,863 | 3% | 13,690 | 3% | 5,173 | 38% |
| | <u>442,803</u> | <u>63%</u> | <u>324,878</u> | <u>77%</u> | <u>117,925</u> | <u>36%</u> |
| Europe: | | | | | | |
| Recurring revenues | 165,669 | 24% | 35,309 | 9% | 130,360 | 369% |
| Non-recurring revenues | 11,833 | 1% | 2,181 | 0% | 9,652 | 443% |
| | <u>177,502</u> | <u>25%</u> | <u>37,490</u> | <u>9%</u> | <u>140,012</u> | <u>373%</u> |
| Asia-Pacific: | | | | | | |
| Recurring revenues | 77,554 | 11% | 52,668 | 13% | 24,886 | 47% |
| Non-recurring revenues | 6,821 | 1% | 4,406 | 1% | 2,415 | 55% |
| | <u>84,375</u> | <u>12%</u> | <u>57,074</u> | <u>14%</u> | <u>27,301</u> | <u>48%</u> |
| Total: | | | | | | |
| Recurring revenues | 667,163 | 95% | 399,165 | 95% | 267,998 | 67% |
| Non-recurring revenues | 37,517 | 5% | 20,277 | 5% | 17,240 | 85% |
| | <u>\$ 704,680</u> | <u>100%</u> | <u>\$ 419,442</u> | <u>100%</u> | <u>\$ 285,238</u> | <u>68%</u> |

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 year ended December 31, 2008, we recorded \$30.6 million of revenue generated from our newly-opened IBX data centers or IBX data center expansions in the Chicago, New York, Silicon Valley and Washington, D.C. metro areas.

Europe Revenues. Our revenues from the United Kingdom, the largest revenue contributor in the Europe region, represented approximately 38% and 37%, respectively, of the regional revenues for the years ended December 31, 2008 and 2007. Our Europe revenues increased over the course of 2008 as this region had grown due to our expansion efforts.

Asia-Pacific Revenues. Our revenues from Singapore, the largest revenue contributor in the Asia-Pacific region, represented approximately 36% and 35%, respectively, of the regional revenues for the years ended December 31, 2008 and 2007. 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, as well as selective price increases in each of our IBX markets. During the year ended December 31, 2008, we recorded \$12.5 million of revenue generated from our IBX data center expansions in the Hong Kong, Singapore and Tokyo metro areas.

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Cost of Revenues. Our cost of revenues for the years ended December 31, 2008 and 2007 were split among the following geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|--------------|--------------------------|-------------|------------------|-------------|------------------|------|
| | 2008 | % | 2007 | % | \$ | % |
| U.S. | \$238,583 | 57% | \$198,455 | 75% | \$ 40,128 | 20% |
| Europe | 122,658 | 30% | 30,245 | 12% | 92,413 | 306% |
| Asia-Pacific | 53,558 | 13% | 35,068 | 13% | 18,490 | 53% |
| Total | <u>\$414,799</u> | <u>100%</u> | <u>\$263,768</u> | <u>100%</u> | <u>\$151,031</u> | 57% |

| | Years ended December 31, | |
|--|-----------------------------|------|
| | 2008 | 2007 |
| <i>Cost of revenues as a percentage of revenues:</i> | | |
| U.S. | 54% | 61% |
| Europe | 69% | 81% |
| Asia-Pacific | 63% | 61% |
| Total | 59% | 63% |

U.S. Cost of Revenues. U.S. cost of revenues for the years ended December 31, 2008 and 2007 included \$91.9 million and \$73.6 million, respectively, of depreciation expense. Growth in depreciation expense was due to our IBX data center expansion activity. 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 \$15.7 million in utility costs as a result of increased customer installations, (ii) \$6.0 million in higher compensation costs and (iii) an increase of \$2.3 million in repair and maintenance costs, partially offset by a decrease of \$3.0 million in rent and facility costs as a result of certain property acquisitions in 2007 and 2008.

Europe Cost of Revenues. Europe cost of revenues for the years ended December 31, 2008 and 2007 included \$33.5 million and \$7.6 million, respectively, of depreciation expense. Our Europe cost of revenues increased over the course of 2008 as this region grew due to our expansion efforts.

Asia-Pacific Cost of Revenues. Asia-Pacific cost of revenues for the years ended December 31, 2008 and 2007 included \$17.6 million and \$9.3 million, respectively, of depreciation expense. Growth in depreciation expense was due to our IBX data center expansion activity. 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 connection with revenue growth, such as \$4.2 million of higher utility costs arising from increased customer installations and revenues attributed to customer growth, as well as \$2.5 million of additional rent expense associated with new leases in connection with our expansion activity.

Sales and Marketing Expenses. Our sales and marketing expenses for the years ended December 31, 2008 and 2007 were split among the following geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|--------------|--------------------------|-------------|-----------------|-------------|-----------------|------|
| | 2008 | % | 2007 | % | \$ | % |
| U.S. | \$38,219 | 57% | \$31,291 | 77% | \$ 6,928 | 22% |
| Europe | 19,331 | 29% | 2,987 | 7% | 16,344 | 547% |
| Asia-Pacific | 9,363 | 14% | 6,441 | 16% | 2,922 | 45% |
| Total | <u>\$66,913</u> | <u>100%</u> | <u>\$40,719</u> | <u>100%</u> | <u>\$26,194</u> | 64% |

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| | Years ended December 31, | |
|--|-----------------------------|------|
| | 2008 | 2007 |
| <i>Sales and marketing expenses as a percentage of revenues:</i> | | |
| U.S. | 9% | 10% |
| Europe | 11% | 8% |
| Asia-Pacific | 11% | 11% |
| Total | 9% | 10% |

U.S. Sales and Marketing Expenses. The increase in U.S. sales and marketing expenses was primarily due to an increase of \$3.3 million in sales compensation costs as a result of revenue growth and \$2.6 million of higher expenditures related to our branding initiatives.

Europe Sales and Marketing Expenses. Our Europe sales and marketing expenses for the years ended December 31, 2008 and 2007 included \$6.0 million and \$1.8 million of amortization expense related to customer contract intangible assets. Excluding amortization expense, our Europe sales and marketing expenses have grown over the course of 2008 as we grew this business and invested in various branding and integration initiatives. During the year ended December 31, 2008, we also recorded \$1.3 million of bad debt expense.

Asia-Pacific Sales and Marketing Expenses. The increase in Asia-Pacific sales and marketing expenses was primarily due to an increase in sales compensation over the prior period associated with the overall growth in this region and with expenditures related to our branding initiatives.

General and Administrative Expenses. Our general and administrative expenses for the years ended December 31, 2008 and 2007 were split among the following geographic regions (dollars in thousands):

| | Years ended December 31, | | | | Change | |
|--------------|--------------------------|-------------|------------------|-------------|-----------------|------|
| | 2008 | % | 2007 | % | \$ | % |
| U.S. | \$ 96,657 | 66% | \$ 83,215 | 79% | \$13,442 | 16% |
| Europe | 34,071 | 23% | 8,292 | 7% | 25,779 | 311% |
| Asia-Pacific | 15,836 | 11% | 14,287 | 14% | 1,549 | 11% |
| Total | <u>\$146,564</u> | <u>100%</u> | <u>\$105,794</u> | <u>100%</u> | <u>\$40,770</u> | 39% |

| | Years ended December 31, | |
|---|-----------------------------|------|
| | 2008 | 2007 |
| <i>General and administrative expenses as a percentage of revenues:</i> | | |
| U.S. | 22% | 26% |
| Europe | 19% | 22% |
| Asia-Pacific | 19% | 25% |
| Total | 21% | 25% |

U.S. General and Administrative Expenses. The increase in U.S. general and administrative expenses was primarily due to (i) \$7.9 million of higher compensation costs, including increases in general salary, bonuses and stock-based compensation, and headcount growth (259 U.S. general and administrative employees as of December 31, 2008 versus 240 as of December 31, 2007), (ii) an increase of \$2.6 million in professional fees related to various consulting projects to support our growth and (iii) an increase of \$919,000 in depreciation expense as a result of our continued investment in information technology systems to support our growth.

Europe General and Administrative Expenses. Our Europe general and administrative expenses for the years ended December 31, 2008 and 2007 included \$7.8 million and \$862,000, respectively, of stock-based compensation expense. Excluding stock-based compensation expense, our Europe general and administrative expenses had increased over the course of 2008 in connection with our growth and integration initiatives.

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Asia-Pacific General and Administrative Expenses. The increase in Asia-Pacific general and administrative expenses was primarily due to higher compensation costs, including general salary increases and bonuses.

Restructuring Charges. During the year ended December 31, 2008, we recorded a restructuring charge adjustment of \$3.1 million from revised sublease assumptions on our two excess space leases in the Los Angeles and New York metro areas as a result of new information becoming available. During the year ended December 31, 2007, we recorded a restructuring charge adjustment of \$407,000 from revised sublease assumptions for the excess space lease in the Los Angeles metro area as a result of new information becoming available. The original restructuring charge for these two leases was recorded in the fourth quarter of 2004 and totaled \$17.7 million. We are contractually committed to these two space leases through 2015 (although we reversed our position on one of these leases in 2009, as discussed above).

Gains on Asset Sales. During the year ended December 31, 2007, we recorded a \$1.3 million gain in connection with the sale of our Equinix mail service offering, which we sold for \$1.7 million in gross cash proceeds. No gains on asset sales were recorded during the year ended December 31, 2008.

Interest Income. Interest income decreased to \$8.9 million for the year ended December 31, 2008 from \$15.4 million for the year ended December 31, 2007. Interest income decreased primarily due to lower yields on invested balances and lower average cash balances. The average yield for the year ended December 31, 2008 was 2.77% versus 5.08% for the year ended December 31, 2007.

Interest Expense. Interest expense increased to \$61.7 million for the year ended December 31, 2008 from \$32.0 million for the year ended December 31, 2007. The increase in interest expense was primarily due to new financings entered into during 2007 and 2008 consisting of (i) our \$110.0 million Chicago IBX financing, which was drawn down during the construction period of the Chicago metro area IBX expansion project and which became fully drawn in March 2008, with an approximate interest rate of 4.19% per annum; (ii) our \$250.0 million 2.50% convertible subordinated notes offering in March 2007; (iii) our approximately \$91.0 million Asia-Pacific financing, of which approximately \$63.2 million was drawn during 2008 and, which was fully drawn as of December 31, 2008, with an approximate blended interest rate of 3.69% per annum; (iv) our \$396.0 million 3.00% convertible subordinated notes offering in September 2007; (v) our approximately \$131.0 million European financing, of which approximately \$72.7 million was drawn during 2008 leaving only approximately \$2.9 million remaining available to draw, with an approximate blended interest rate of 4.39% per annum and (vi) our Netherlands financing of approximately \$6.5 million, acquired as a result of the Virtu acquisition, with an approximate interest rate of 4.18% per annum. This increase was partially offset by the partial conversion of \$13.1 million of our 2.50% convertible subordinated debentures in November 2008 that resulted in a decrease in interest expense. During the years ended December 31, 2008 and 2007, we capitalized \$7.9 million and \$10.4 million, respectively, of interest expense to construction in progress.

Other-Than-Temporary Impairment Loss On Investments. For the year ended December 31, 2008, we recorded \$1.5 million of other-than-temporary impairment losses on one of our money market accounts as more fully described in Note 5 of Notes to Consolidated Financial Statements included elsewhere in this prospectus. For the year ended December 31, 2007, we did not record any other-than-temporary impairment loss on investments.

Other Income (Expense). For the year ended December 31, 2008, we recorded \$1.3 million of other income, primarily attributable to foreign currency exchange gains during the year. For the year ended December 31, 2007, we recorded \$3.0 million of other income, primarily due to foreign currency exchange gains, including a foreign exchange gain of \$1.5 million as a result of hedging a portion of the IXEurope acquisition purchase price with forward contracts.

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Loss on Conversion and Extinguishment of Debt. In March 2007, we retired \$54.0 million of our convertible subordinated debentures in exchange for approximately 1.4 million newly issued shares of our common stock. As a result, we recorded a \$3.4 million loss on debt conversion in accordance with the accounting standard for induced conversions of convertible debt due to the inducement fee paid. In September 2007, a senior bridge loan was terminated unused and, as a result, we recorded a \$2.5 million loss on debt extinguishment reflecting the immediate write-off of capitalized debt issuance costs to secure the senior bridge loan. As a result of these two events, during the year ended December 31, 2007 we recognized a total of \$5.9 million of loss on debt conversion and extinguishment. During the year ended December 31, 2008, we did not record any loss on conversion or extinguishment of debt.

Income Taxes. For the year ended December 31, 2008, we recorded \$87.6 million of income tax benefits primarily due to recognition of deferred tax assets of \$85.1 million and \$6.1 million associated with our U.S. and Australian operations, respectively, partially offset by tax provisions from other jurisdictions. For the year ended December 31, 2007, we recorded \$473,000 of income tax expense primarily attributable to our foreign operations. As of December 31, 2008, we had a total valuation allowance of \$40.3 million against our deferred tax assets, which is attributable to certain of our foreign operations.

As of December 31, 2008, we had total net deferred tax assets of \$81.7 million consisting primarily of favorable temporary differences and net operating loss carryforwards, the majority of which are attributable to our U.S. operations. Approximately \$155.0 million of future pretax earnings for financial reporting purposes would need to be generated to realize these favorable temporary differences associated with our U.S. operations. In addition, approximately \$54.0 million of future taxable income would need to be generated in future years to realize these net operating loss carryforwards associated with our U.S. operations. For further information on our income taxes, refer to Note 13 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

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 this non-GAAP financial measure, 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, acquisition costs and gains on asset sales. Legislative and regulatory requirements encourage 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.

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 historic 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

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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. We also exclude acquisition costs from our non-GAAP financial measures. The acquisition costs relate to costs we incur in connection with business combinations. With respect to 2007 results, we exclude the gain from the sale of our Equinix mail service offering located in Singapore, which is referred to as the EMS sale. The gain on the EMS sale represents a unique transaction for us and future sales of other service offerings are not expected. Management believes such items as restructuring charges, acquisition costs and gains on asset sales 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 measure 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 us 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, acquisition costs and gains on asset sales as presented below (dollars in thousands):

| | Years ended December 31, | | |
|--|--------------------------|------------------|-------------------|
| | 2009 | 2008 | 2007 |
| Income from operations | \$181,079 | \$ 73,262 | \$ 10,092 |
| Depreciation, amortization and accretion expense | 175,371 | 160,987 | 103,498 |
| Stock-based compensation expense | 53,056 | 55,085 | 42,731 |
| Restructuring charges | (6,053) | 3,142 | 407 |
| Acquisitions costs | 5,155 | — | — |
| Gains on asset sales | — | — | (1,338) |
| Adjusted EBITDA | <u>\$408,608</u> | <u>\$292,476</u> | <u>\$ 155,390</u> |

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

| | Years ended December 31, | | |
|--|--------------------------|-------------------|-------------------|
| | 2009 | 2008 | 2007 |
| <i>U.S.:</i> | | | |
| Income from operations | \$ 128,168 | \$ 66,202 | \$ 11,510 |
| Depreciation, amortization and accretion expense | 106,207 | 101,414 | 83,893 |
| Stock-based compensation expense | 40,082 | 40,993 | 36,552 |
| Restructuring charges | (6,053) | 3,142 | 407 |
| Acquisitions costs | 4,091 | — | — |
| Adjusted EBITDA | <u>\$ 272,495</u> | <u>\$ 211,751</u> | <u>\$ 132,362</u> |
| <i>Europe:</i> | | | |
| Income (loss) from operations | \$ 31,202 | \$ 1,442 | \$ (4,034) |
| Depreciation, amortization and accretion expense | 43,744 | 41,208 | 9,837 |
| Stock-based compensation expense | 5,843 | 8,473 | 899 |
| Acquisitions costs | 1,064 | — | — |
| Adjusted EBITDA | <u>\$ 81,853</u> | <u>\$ 51,123</u> | <u>\$ 6,702</u> |
| <i>Asia-Pacific:</i> | | | |
| Income from operations | \$ 21,709 | \$ 5,618 | \$ 2,616 |
| Depreciation, amortization and accretion expense | 25,420 | 18,365 | 9,768 |
| Stock-based compensation expense | 7,131 | 5,619 | 5,280 |
| Gains on asset sales | — | — | (1,338) |
| Adjusted EBITDA | <u>\$ 54,260</u> | <u>\$ 29,602</u> | <u>\$ 16,326</u> |

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 December 31, 2009 and before giving effect to this offering, 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 \$591.3 million of principal from our Washington D.C. metro area IBX capital lease, San Jose IBX equipment and fiber financing, Chicago IBX equipment financing, Los Angeles IBX financing, Paris IBX capital lease, Zurich IBX financing, London IBX financing, Ashburn campus mortgage payable, Chicago IBX financing, Asia-Pacific financing, European financing, Netherlands financing, Singapore financing and other financing obligations.

We believe we have sufficient cash, coupled with anticipated cash generated from operating activities and the net proceeds of this offering, 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 December 31, 2009, we had \$604.4 million of cash, cash equivalents and short-term and long-term investments.

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However, of this amount, a total of \$67.2 million resides in certain European subsidiaries where the use of such cash is currently limited to the general working capital needs of these certain European subsidiaries 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 December 31, 2009, we had a total of approximately \$13.3 million of additional liquidity available to us, which consists of (i) \$8.3 million under the \$25.0 million Bank of America revolving credit line, which we amended in February 2010 to extend the maturity date to February 2011 (see Note 18 of Notes to Consolidated Financial Statements included elsewhere in this prospectus); (ii) \$3.2 million under the European financing for general working capital purposes and (iii) \$1.8 million under the Singapore financing. Our indebtedness as of December 31, 2009, as noted above, included \$591.3 million 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 December 31, 2009, 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

| | Years ended December 31, | | |
|---|--------------------------|------------------------|-------------|
| | 2009 | 2008 (in thousands) | 2007 |
| Net cash provided by operating activities | \$ 355,492 | \$ 267,558 | \$ 120,020 |
| Net cash used in investing activities | (558,178) | (478,040) | (1,054,725) |
| Net cash provided by financing activities | 323,598 | 145,106 | 1,145,013 |

Operating Activities

The increase in net cash provided by operating activities was primarily due to improved operating results as discussed above, strong collections of accounts receivable, management of vendor payments and growth in customer installations, which increases deferred installation revenue. We expect that we will continue to generate cash from our operating activities throughout 2010 and beyond.

Investing Activities

The significant increase in net cash used in investing activities during 2007 compared to 2009 and 2008 included (i) \$541.8 million spent to acquire IXEurope, net of cash acquired, and (ii) \$120.5 million spent to acquire real estate properties in San Jose and Los Angeles, California. Excluding these unique and significant

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events, the changes in our investing activities over the past three years is primarily related to our capital expenditures in property, plant and equipment for our IBX data center expansion activity. During the three years ended December 31, 2009, these capital expenditures were \$369.5 million, \$447.0 million and \$376.8 million, respectively. We expect that our IBX expansion construction activity will be at consistent levels when compared to the past three years. 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

The significant increase in net cash provided by financing activities during 2007 compared to 2009 and 2008 included approximately \$967.0 million of net proceeds raised in a common stock offering and two convertible debt offerings, the majority of which was used to fund the IXEurope acquisition and our IBX data center expansion activities. Excluding this significant amount of fundraising in 2007, the changes in our financing activities primarily relate to the net proceeds from a convertible debt offering of \$373.8 million for the year ended December 31, 2009 and the proceeds from our mortgage and notes payable and credit line totaling \$29.5 million, \$142.4 million and \$149.6 million, respectively, for the three years ended December 31, 2009. We expect that our financing activities will consist primarily of repayment of our debt during 2010 although this will be offset by the proceeds of any financings we may undertake during 2010.

Debt Obligations—Convertible Debt

4.75% Convertible Subordinated Notes. In June 2009, we issued \$373.8 million aggregate principal amount of 4.75% convertible subordinated notes due June 15, 2016. Interest is payable semi-annually on June 15 and December 15 of each year, beginning December 15, 2009. The initial conversion rate is 11.8599 shares of common stock per \$1,000 principal amount of 4.75% convertible subordinated notes, subject to adjustment. This represents an initial conversion price of approximately \$84.32 per share of common stock. Upon conversion, holders will receive, at our election, cash, shares of our common stock or a combination of cash and shares of our common stock. As of December 31, 2009, the 4.75% convertible subordinated notes were convertible into 4.4 million shares of our common stock.

Holders of the 4.75% convertible subordinated notes may convert their notes under certain defined circumstances, including during any fiscal quarter (and only during that fiscal quarter) ending after December 31, 2009, if the sale price of our common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, which was \$109.62 per share, or at any time on or after March 15, 2016.

Upon conversion, if we elected to pay a sufficiently large portion of the conversion obligation in cash, additional consideration beyond the \$373.8 million of gross proceeds received would be required. However, to minimize the impact of potential dilution upon conversion of the 4.75% convertible subordinated notes, we entered into capped call transactions, which are referred to as the capped call, separate from the issuance of the 4.75% convertible subordinated notes, for which we paid a premium of \$49.7 million. The capped call covers a total of approximately 4.4 million shares of our common stock, subject to adjustment. Under the capped call, we effectively raised the conversion price of the 4.75% convertible subordinated notes from \$84.32 to \$114.82. Depending upon our stock price at the time the 4.75% convertible subordinated notes are converted, the capped call will return up to 1.2 million shares of our common stock to us; however, we will receive no benefit from the capped call if our stock price is \$84.32 or lower at the time of conversion and will receive less shares for share prices in excess of \$114.82 at the time of conversion than we would have received at a share price of \$114.82 (our benefit from the capped call is capped at \$114.82 and no additional benefit is received beyond this price).

We do not have the right to redeem the 4.75% convertible subordinated notes at our option.

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We separately accounted for the liability and equity components of our 4.75% convertible subordinated notes in accordance with a FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement). See "4.75% Convertible Subordinated Notes" in Note 8 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

3.00% Convertible Subordinated Note. In September 2007, we issued \$396.0 million aggregate principal amount of 3.00% Convertible Subordinated Notes due October 15, 2014. Interest is payable semi-annually on April 15 and October 15 of each year, and commenced in April 2008.

Holders of the 3.00% convertible subordinated notes may convert their notes at their option on any day up to and including the business day immediately preceding the maturity date into shares of our common stock. The base conversion rate is 7.436 shares of common stock per \$1,000 principal amount of 3.00% convertible subordinated notes, subject to adjustment. This represents a base conversion price of approximately \$134.48 per share of common stock. If, at the time of conversion, the applicable stock price of our common stock exceeds the base conversion price, the conversion rate will be determined pursuant to a formula resulting in the receipt of up to 4.4616 additional shares of common stock per \$1,000 principal amount of the 3.00% convertible subordinated notes, subject to adjustment. However, in no event would the total number of shares issuable upon conversion of the 3.00% convertible subordinated notes exceed 11.8976 per \$1,000 principal amount of 3.00% convertible subordinated notes, subject to anti-dilution adjustments, or the equivalent of \$84.05 per share of our common stock or a total of 4.7 million shares of our common stock. As of December 31, 2009, the 3.00% convertible subordinated notes were convertible into 2.9 million shares of our common stock.

We do not have the right to redeem the 3.00% Convertible Subordinated notes at our option.

2.50% Convertible Subordinated Notes. In March 2007, we issued \$250.0 million in aggregate principal amount of 2.50% convertible subordinated notes due 2012. The interest on the 2.50% convertible subordinated notes is payable semi-annually every April 15th and October 15th, and commenced in October 2007. The initial conversion rate is 8.9259 shares of common stock per \$1,000 principal amount of convertible subordinated notes, subject to adjustment. This represents an initial conversion price of approximately \$112.03 per share of common stock or 2.2 million shares of our common stock. Upon conversion, holders will receive, at our election, cash, shares of our common stock or a combination of cash and shares of our common stock.

Holders of the 2.50% convertible subordinated notes may convert their notes under certain defined circumstances, including during any fiscal quarter (and only during that fiscal quarter) ending after June 30, 2007, if the sale price of our common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, which was \$145.64 per share, or at any time on or after March 15, 2012.

We may only redeem all or a portion of the 2.50% convertible subordinated notes at any time after April 16, 2010 for cash but only if the closing sale price of our common stock for at least 20 of the 30 consecutive trading days immediately prior to the day we give notice of redemption is greater than 130% of the applicable conversion price per share of common stock on the date of the notice, which was \$145.64 per share as of December 31, 2009. The redemption price will equal 100% of the principal amount of the convertible subordinated notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

Upon conversion, due to the conversion formulas associated with the 2.50% convertible subordinated notes, if our stock is trading at levels exceeding 130% of the conversion price per share of common stock, and if we elect to pay any portion of the consideration in cash, additional consideration beyond the \$250.0 million of gross proceeds received would be required. However, in no event would the total number of shares issuable upon conversion of the 2.50% convertible subordinated notes exceed 11.6036 per \$1,000 principal amount of convertible subordinated notes, subject to anti-dilution adjustments, or the equivalent of \$86.18 per share of common stock or a total of 2.9 million shares of our common stock. As of December 31, 2009, the 2.50% convertible subordinated notes were convertible into 2.2 million shares of our common stock.

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We separately accounted for the liability and equity components of our 2.50% convertible subordinated notes in accordance with a FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement). See “2.50% Convertible Subordinated Notes” in Note 8 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

Debt Obligations—Non-Convertible Debt

Capital Lease and Other Financing Obligations

Washington D.C. Metro Area IBX Capital Lease. In April 2004, we entered into a long-term lease for a 95,000 square foot data center in the Washington, D.C. metro area. The center is adjacent to our existing Washington D.C. metro area IBX data center. This lease, which includes the leasing of all of the IBX plant and machinery equipment located in the building, is a capital lease. We took possession of this property during the fourth quarter of 2004, and as a result, recorded property, plant and equipment assets, as well as a capital lease obligation, totaling \$35.3 million. Payments under this lease will be made monthly through October 2019 at an effective interest rate of 8.50% per annum. As of December 31, 2009, principal of approximately \$30.1 million remained outstanding under this capital lease.

San Jose IBX Equipment and Fiber Financing. In December 2004, we entered into a long-term lease for a 103,000 square foot data center in San Jose, and at the same time entered into separate agreements to purchase the equipment located within this new IBX data center and to interconnect all three of our Silicon Valley area IBX data centers to each other through redundant dark fiber links. Under U.S. generally accepted accounting principles, these three separate agreements were considered to be a single arrangement. Furthermore, while the building component of this transaction is classified as a long-term operating lease, the equipment and fiber portions of the transaction were classified as financed assets. We took possession of this property during the first quarter of 2005, and as a result, recorded property, plant and equipment and prepaid fiber assets, as well as a financing obligation, totaling \$18.7 million. Payments under this financing obligation will be made monthly through May 2020 at an effective interest rate of 8.50% per annum. As of December 31, 2009, principal of approximately \$13.7 million remained outstanding under this financing obligation.

Chicago IBX Equipment Financing. In July 2005, we entered into a long-term sublease for a 107,000 square foot data center in Chicago, and at the same time entered into a separate agreement to purchase the equipment located within this IBX data center. Under U.S. generally accepted accounting principles, these two separate agreements were considered to be a single arrangement. Furthermore, while the building component of this transaction is classified as a long-term operating lease, the equipment portion of the transaction is classified as financed assets. We took possession of this property and title to the equipment assets in November 2005, and as a result, recorded IBX equipment assets, as well as a financing obligation, totaling \$9.7 million at that time. Payments under this financing obligation will be made monthly through August 2015 at an effective interest rate of 7.50% per annum. As of December 31, 2009, principal of approximately \$6.2 million remained outstanding under this financing obligation.

Los Angeles IBX Financing. In September 2005, we purchased a 107,000 square foot data center in the Los Angeles metro area for \$34.7 million, which we paid for in full with cash. In October 2005, we entered into a purchase and sale agreement to sell this Los Angeles IBX for \$38.7 million and to lease it back from the purchaser pursuant to a long-term lease, which closed in December 2005, and we received net proceeds from the sale of this property of \$38.1 million. However, due to our continuing involvement concerning certain aspects of this property, the sale and leaseback of this property does not qualify as a sale-leaseback under U.S. generally accepted accounting principles, but rather is accounted for as a financing of the property. We refer to this portion of the transaction as the Los Angeles IBX financing. Pursuant to the Los Angeles IBX financing, we recorded a financing obligation liability totaling \$38.1 million in December 2005. Payments under the Los Angeles IBX financing will be made monthly through December 2025 at an effective interest rate of 7.75% per annum. As of December 31, 2009, principal of approximately \$37.4 million remained outstanding under this financing obligation.

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Paris IBX Capital Lease. In September 2008, we entered into a long-term lease for 10,850 square meters of vacant space within a warehouse building in the Paris, France metro area. The center is adjacent to one of our existing Paris metro area IBX data centers. This lease is a capital lease and commenced on October 1, 2008. We took possession of this property during the fourth quarter of 2008, and as a result, recorded property, plant and equipment assets, as well as a capital lease obligation, totaling 28.1 million Euros. Monthly payments under this lease commencing in April 2009 will be made through September 2020 at an effective interest rate of 7.43% per annum. As of December 31, 2009, principal of approximately \$40.6 million remained outstanding under this capital lease.

London IBX Financing. In October 2008, we entered into an agreement for lease for property and a warehouse building to be constructed for us in the London, England metro area. This agreement provides for the completion of a warehouse building within a specified time and the entry into a definitive lease upon its completion, which is referred to as the lease. As of December 31, 2009, principal of approximately \$14.0 million was outstanding under this financing obligation. See “London IBX Expansion Project” in Note 3 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

Zurich IBX Financing. In July 2009, we entered into a long-term lease for building space within a multi-floor, multi-tenant building in the Zurich, Switzerland metro area. This lease has a fixed term of 10 years, with options to extend for up to an additional 10 years, in five-year increments. Cumulative minimum payments under the Zurich Lease total 9.0 million Swiss Francs over the Zurich Lease term, which does not include any rent obligation for the extension periods. Pursuant to the accounting standards for lessee’s involvement in asset construction and for leasing transactions involving special-purpose entities, we are considered the owner of the leased building space during the construction phase due to some specific provisions contained in this lease. Monthly payments under the Zurich IBX Financing commenced in July 2009 and will be made through June 2019 at an effective interest rate of 5.20% per annum. As of December 31, 2009, principal of approximately \$11.5 million remained outstanding under this capital lease.

Other Capital Lease and Financing Obligations. We have various other capital leases and financing obligations under which principal of approximately \$7.6 million remained outstanding as of December 31, 2009.

Mortgage and Loans Payable

Ashburn Campus Mortgage Payable. In December 2005, we completed the financing of our October 2005 purchase of the Ashburn campus property with a \$60.0 million mortgage to be amortized over 20 years. Upon receipt of the \$60.0 million of cash in December 2005, we recorded a \$60.0 million mortgage payable. Payments under the Ashburn campus mortgage payable will be made monthly through January 2026 at an effective interest rate of 8.1% per annum. In December 2006, we obtained an additional financing of \$40.0 million under the Ashburn campus mortgage payable, which increased the total amount financed under the Ashburn campus mortgage payable to \$100.0 million, on the same terms as the initial mortgage payable. As of December 31, 2009, principal of approximately \$91.8 million remained outstanding under this mortgage payable.

Chicago IBX Financing. In February 2007, one of our wholly-owned subsidiaries obtained a loan of up to \$110.0 million to finance up to 60% of the development and construction costs of the Chicago metro area IBX expansion project, which we refer to as the Chicago IBX financing. Funds were advanced at up to 60% of project costs incurred. As of December 31, 2008, we had received advances representing a final loan payable totaling \$110.0 million. The loan payable has an initial maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. In January 2010, we utilized one of the options to extend the loan payable under the Chicago IBX financing for one year, which is set to expire on January 31, 2011. As a result of this extension, the loan payable is repaid in monthly installments beginning in February 2010. The loan payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced in March 2007. As of December 31, 2009, the loan payable had an approximate interest rate of 3.00% per annum. The Chicago IBX financing has no specific financial covenants, contains a limited parent company guaranty and is collateralized by the assets of one of our Chicago IBX data centers.

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In May 2008, we entered into an interest rate swap agreement with one counterparty to hedge the interest payments on principal of \$105.0 million of the Chicago IBX financing, which will mature in February 2011. Under the terms of the interest rate swap transaction, we receive interest payments based on rolling one-month LIBOR terms and pay interest at the fixed interest rate of 6.34% (swap rate of 3.59% plus borrowing margin of 2.75%).

Asia-Pacific Financing. In August 2007, two of our wholly-owned subsidiaries, located in Singapore and Tokyo, Japan, entered into an approximately \$47.9 million multi-currency credit facility agreement (using the exchange rates as of December 31, 2009), which is comprised of 23.0 million Singapore dollars and 2.9 billion Japanese yen, respectively, which we refer to as the Asia-Pacific financing. In 2008, the Asia-Pacific financing was amended to enable our subsidiaries in Australia and Hong Kong to borrow up to 32.0 million Australian dollars and 156.0 million Hong Kong dollars, respectively, under the same general terms, amending the Asia-Pacific financing into an approximately \$96.7 million multi-currency credit facility agreement. The Asia-Pacific financing has a four-year term that allows these four subsidiaries to borrow up to their credit limits during the first 12-month period with repayment to occur over the remaining three years in 12 equal quarterly installments. The Asia-Pacific financing bears interest at a floating rate (the relevant three-month local cost of funds), as applicable, plus 1.85%-2.50% depending on the ratio of our senior indebtedness to our earnings before interest, taxes, depreciation and amortization, or EBITDA, with interest payable quarterly. Loans payable under the Asia-Pacific financing have a final maturity date of March 2012. The Asia-Pacific financing was used by these four subsidiaries to fund capital expenditures on leasehold improvements, equipment, and other installation costs related to expansion plans in Singapore, Tokyo, Sydney and Hong Kong. The Asia-Pacific financing is guaranteed by the parent company and is secured by the assets of these four subsidiaries, including a pledge of their shares, and has several financial covenants specific to our Asia-Pacific operations with which we must comply quarterly. As of December 31, 2009, a total of approximately \$64.6 million was outstanding under the Asia-Pacific financing at an approximate blended interest rate of 3.45%. As of December 31, 2009, we were in compliance with all financial covenants in connection with the Asia-Pacific financing.

European Financing. In September 2007, as a result of the IXEurope acquisition, our wholly-owned subsidiary assumed a senior facilities agreement totaling approximately 82.0 million British pounds, or approximately \$132.6 million (using the exchange rate as of December 31, 2009), which we refer to as the European financing. The European financing is comprised of three facilities: (i) Facility A, which was available to draw upon through March 2008, provides for a term loan of up to approximately 40.0 million British pounds and bears a floating interest rate per annum of between 0.875% and 2.25% above LIBOR or EURIBOR; (ii) Facility B, which was available to draw upon through June 2010, provides for a term loan of up to approximately 40.0 million British pounds and bears a floating interest rate per annum of between 0.875% and 2.25% above LIBOR or EURIBOR and (iii) Facility C, which is available to draw upon through May 2014, provides for a revolving credit facility of up to approximately 2.0 million British pounds and bears a floating interest rate per annum of between 0.875% and 2.125% above LIBOR or EURIBOR. As of December 31, 2009, we had fully utilized Facility A and Facility B under the European financing. The European financing has a final maturity date of June 30, 2014 and interest is payable in periods of one, two, three or six months at our election. Facility A will be repaid in 13 semi-annual installments, which commenced June 30, 2008. Facility B will be repaid in nine semi-annual installments commencing June 30, 2010. Facility C will be repaid at the final maturity date. The European financing is available to fund our current or future operations in Europe, including capital expenditures, for certain subsidiaries in Europe, and amounts can be drawn in British pounds, Euros or Swiss francs. The European financing is collateralized by certain of our assets in Europe and contains several financial covenants specific to our European operations with which we must comply quarterly. In January 2009, we amended certain provisions of the European financing related to certain financial covenants and acknowledgment of the appointment of an executive officer in Europe. As of December 31, 2009, we were in compliance with all financial covenants in connection with the European financing.

Upon a written request from us at any time after December 31, 2007 and through the final maturity date, and upon approval by the lenders, an additional term loan of up to 15.0 million British pounds, or approximately

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\$21.9 million, may be made available to us. The European financing requires us to hedge the floating interest rates inherent in the European financing (on just a portion of the total amounts outstanding). As of December 31, 2009, approximately \$130.1 million was outstanding under the European financing at an approximate blended interest rate of 1.62% per annum.

In May 2008, we entered into three interest rate swap agreements to hedge the interest payments on the equivalent principal of \$89.1 million of the European financing, which will mature in May 2011. Under the terms of the interest rate swap transactions, we receive interest payments based on rolling one-month EURIBOR and LIBOR terms and pay fixed interest rates ranging from 5.59% to 7.03% (swap rates ranging from 4.46% to 5.91% plus borrowing margin).

Singapore Financing. In September 2009, our wholly-owned subsidiary in Singapore entered into a 37.0 million Singapore dollar, or approximately \$26.3 million (using the exchange rate as of December 31, 2009) credit facility agreement, which is referred to as the Singapore financing. The Singapore financing is comprised of two tranches: (i) Facility A, which is available for drawing upon through March 18, 2010, provides a term loan of up to 34.5 million Singapore dollars and (ii) Facility B, which is available for drawing upon through September 12, 2010, provides a term loan of up to 2.5 million Singapore dollars. As of December 31, 2009, we had fully utilized Facility A under the Singapore financing. Facility A will be repaid in nine semi-annual installments beginning August 2010 and Facility B will be repaid in eight semi-annual installments beginning February 2011. The loans payable under the Singapore financing bear interest at a floating rate (swap offer rate plus 3.65% per annum). The Singapore financing has a final maturity date of August 31, 2014 and interest is payable in periods of one, three or six months at the election of our Singaporean subsidiary. The Singapore financing is guaranteed by the parent, Equinix, and is secured by the assets of our second IBX data center in Singapore. The Singapore financing has several financial covenants specific to our operations in Singapore, with which we must comply periodically, commencing in the second quarter of 2010. As of December 31, 2009, we had borrowings under the Facility A tranche of 34.5 million Singapore dollars, or approximately \$24.6 million, at an approximate interest rate per annum of 4.20%, leaving 2.5 million Singapore dollars, or approximately \$1.8 million, available for future borrowings under the Singapore financing.

Netherlands Financing. In February 2008, as a result of the Virtu acquisition, our wholly-owned subsidiary in the Netherlands assumed senior credit facilities totaling approximately 5.5 million Euros, which are callable by the lender and bear interest at a floating rate (three month EURIBOR plus 1.25%), which is referred to as the Netherlands financing. In June 2009, we amended the Netherlands financing by entering into a 7.0 million Euro term loan to replace the previously outstanding senior credit facilities. The Netherlands financing contains several financial covenants, which we must comply with annually, is guaranteed by us and is collateralized by substantially all of our operations in the Netherlands. As of December 31, 2009, we were in compliance with all financial covenants in connection with the Netherlands financing. The Netherlands financing has a final maturity date of June 30, 2016 with repayment to occur over the remaining seven years in 28 equal quarterly installments, which commenced in September 2009. The Netherlands financing bears interest at a floating rate (three month EURIBOR plus 3.60% per annum). As of December 31, 2009, a total of 6.5 million Euros, or approximately \$9.3 million, was outstanding under the Netherlands financing with an approximate interest rate per annum of 4.31%.

\$25.0 Million Bank of America Revolving Credit Line. In February 2009, we entered into a \$25.0 million one-year revolving credit facility with Bank of America, which is referred to as the \$25.0 million Bank of America revolving credit line. 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

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accounts receivable balances. As of December 31, 2009, we were in compliance with all financial covenants in connection with the 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. During the year ended December 31, 2009, we entered into 17 irrevocable letters of credit totaling approximately \$16.7 million under the \$25.0 million Bank of America revolving credit line, which resulted in our release of restricted cash to unrestricted cash. As a result, the amount available to borrow was approximately \$8.3 million as of December 31, 2009. In February 2010, we amended the \$25.0 million Bank of America revolving credit line to extend the maturity date to February 2011.

Contractual Obligations and Off-Balance-Sheet Arrangements

We lease a majority of our IBX data centers and certain equipment under non-cancelable lease agreements expiring through 2027. The following represents our contractual obligations as of December 31, 2009 (in thousands):

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 and thereafter | Total |
|---|-------------------|-------------------|-----------------------|-------------------|-------------------|---------------------|---------------------|
| Convertible debt ⁽¹⁾ | \$ — | \$ — | \$ 250,000 | \$ — | \$ 395,986 | \$ 373,750 | \$ 1,019,736 |
| Chicago IBX financing ⁽¹⁾ | 5,362 | 6,016 | 98,613 ⁽⁷⁾ | — | — | — | 109,991 |
| Asia-Pacific financing ⁽¹⁾ | 32,241 | 28,249 | 4,069 | — | — | — | 64,559 |
| European financing ⁽¹⁾ | 15,823 | 17,585 | 21,094 | 25,497 | 50,059 | — | 130,058 |
| Singapore financing ⁽¹⁾ | 1,228 | 6,140 | 6,139 | 6,140 | 4,912 | — | 24,559 |
| Netherlands financing ⁽¹⁾ | 1,432 | 1,433 | 1,432 | 1,433 | 1,432 | 2,149 | 9,311 |
| Interest ⁽²⁾ | 51,968 | 44,207 | 33,995 | 31,067 | 27,689 | 25,971 | 214,897 |
| Mortgage payable ⁽³⁾ | 10,164 | 10,164 | 10,164 | 10,164 | 10,165 | 113,174 | 163,995 |
| Capital lease and other financing obligations ⁽³⁾ | 17,477 | 19,507 | 19,392 | 19,497 | 20,033 | 162,398 | 258,304 |
| Operating leases under accrued restructuring charges ⁽³⁾ | 2,284 | 2,266 | 2,455 | 2,471 | 2,487 | 1,460 | 13,423 |
| Operating leases ⁽⁴⁾ | 66,599 | 62,395 | 61,364 | 62,252 | 60,403 | 250,428 | 563,441 |
| Other contractual commitments ⁽⁵⁾ | 206,535 | 38,603 | 13,707 | — | — | — | 258,845 |
| Asset retirement obligations ⁽⁶⁾ | — | — | — | — | — | 17,710 | 17,710 |
| | <u>\$ 411,113</u> | <u>\$ 236,565</u> | <u>\$ 522,424</u> | <u>\$ 158,521</u> | <u>\$ 573,166</u> | <u>\$ 947,040</u> | <u>\$ 2,848,829</u> |

(1) Represents principal only.

(2) Represents interest on convertible debt, Chicago IBX financing, Asia-Pacific financing, European financing, Singapore financing and Netherlands financing based on their approximate interest rates as of December 31, 2009.

(3) Represents principal and interest.

(4) Represents minimum operating lease payments, excluding potential lease renewals.

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

(6) Represents liability, net of future accretion expense.

(7) The loan payable under the Chicago IBX financing had an initial maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. In January 2010, we extended the maturity of the loan payable under the Chicago IBX financing for a year and we intend to extend the maturity of the loan payable under the Chicago IBX financing for another year in 2011.

In connection with six of our IBX leases, we entered into 17 irrevocable letters of credit totaling \$16.7 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 drawdown on these letters of credit

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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 December 31, 2009, we were contractually committed for \$151.7 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 2010 and 2011, is reflected in the table above as “other contractual commitments.”

We have other non-capital purchase commitments in place as of December 31, 2009, such as commitments to purchase power in select locations, primarily in the U.S., Australia, Germany, Singapore, Tokyo and the United Kingdom, through 2010 and thereafter, and other open purchase orders, which contractually bind us for goods or services to be delivered or provided during 2010 and beyond. Such other purchase commitments as of December 31, 2009, which total \$107.2 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 \$100 million to \$150 million, in addition to the \$151.7 million in contractual commitments discussed above as of December 31, 2009, in our various IBX expansion projects during 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.

Other Off-Balance-Sheet Arrangements

We have various guarantor arrangements with both our directors and officers and third parties, including customers, vendors and business partners (see “Guarantor Arrangements” in Note 14 of Notes to Consolidated Financial Statements included elsewhere in this prospectus. As of December 31, 2009, there were no significant liabilities recorded for these arrangements.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles in the United States (“GAAP”). The preparation of our financial statements requires management to make estimates and assumptions about future events that affect the reported amounts of assets and liabilities and 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. On an ongoing basis, management evaluates the accounting policies, assumptions, estimates and judgments to ensure that our consolidated financial statements are presented fairly and in accordance with GAAP. Management bases its assumptions, estimates and judgments on historical experience, current trends and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. However, because future events and their effects cannot be determined with certainty, actual results may differ from these assumptions and estimates, and such differences could be material.

Our significant accounting policies are discussed in Note 1 of Notes to Consolidated Financial Statements included elsewhere in this prospectus. Management believes that the following critical accounting policies and estimates, among others, are the most critical to aid in fully understanding and evaluating our consolidated financial statements, and they require significant judgments, resulting from the need to make estimates about the effect of matters that are inherently uncertain:

- Accounting for income taxes;
- Accounting for impairment of goodwill; and
- Accounting for property, plant and equipment.

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| Description | Judgments and Uncertainties | Effect if Actual Results Differ From Assumptions |
|---|---|---|
| <p>Accounting for Income Taxes. Deferred tax assets and liabilities are recognized based on the future tax consequences attributable to temporary differences that exist between the financial statement carrying value of assets and liabilities and their respective tax bases, and operating loss and tax credit carryforwards on a taxing jurisdiction basis. We measure deferred tax assets and liabilities using enacted tax rates that will apply in the years in which we expect the temporary differences to be recovered or paid.</p> <p>The accounting standard for income taxes requires a reduction of the carrying amounts of deferred tax assets by recording a valuation allowance if, based on the available evidence, it is more likely than not (defined by the accounting standard as a likelihood of more than 50 percent) such assets will not be realized.</p> | <p>The valuation of deferred tax assets requires judgment in assessing the likely future tax consequences of events that have been recognized in our financial statements or tax returns. Our accounting for deferred tax consequences represents our best estimate of those future events.</p> <p>In assessing the need for a valuation allowance, we consider both positive and negative evidence related to the likelihood of realization of the deferred tax assets. If, based on the weight of available evidence, it is more likely than not the deferred tax assets will not be realized, we record a valuation allowance. The weight given to the positive and negative evidence is commensurate with the extent to which the evidence may be objectively verified.</p> <p>This assessment, which is completed on a taxing jurisdiction basis, takes into account a number of types of evidence, including the following: 1) the nature, frequency and severity of current and cumulative financial reporting losses, 2) sources of future taxable income and 3) tax planning strategies.</p> | <p>As of December 31, 2009 and 2008, we had total net deferred tax assets of \$25.2 million and \$81.7 million, respectively. As of December 31, 2009 and 2008, we had a total valuation allowance of \$34.4 million and \$40.3 million, respectively. During the year ended December 31, 2009, we decided to release our valuation allowance associated with Hong Kong operations and one of our U.K. operations, which resulted in an income tax benefit of \$3.1 million and \$5.2 million, respectively, in our results of operations. In the fourth quarter of 2008, we decided to release our valuation allowances associated with our U.S. and Australian operations, which resulted in an income tax benefit of \$85.1 million and \$6.1 million, respectively, in our results of operations for this period.</p> <p>Our decisions to release our valuation allowances associated with Australian, Hong Kong, U.K. and U.S. operations were based on our belief that the operations of these regions have achieved a sufficient level of profitability and will sustain a sufficient level of profitability in the future to support the release of these valuation allowances based on relevant facts and circumstances. However, if our assumptions on the future performance of these jurisdictions prove not to be correct and these jurisdictions are not able to sustain a sufficient level of profitability to support the associated deferred tax assets on our consolidated balance sheet, we will have to impair our deferred tax assets through an additional valuation allowance, which would</p> |

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| Description | Judgments and Uncertainties | Effect if Actual Results Differ From Assumptions |
|--|--|---|
| | | <p>impact our financial position and results of operations in the period such a determination is made.</p> <p>Our remaining valuation allowances as of December 31, 2009 relates to certain of our subsidiaries outside of the U.S. If and when we release our remaining valuation allowances, it will have an impact to our financial position and results of operations in the periods such determinations are made. We will continue to assess the need for our valuation allowances, by country or location, in the future.</p> |
| <p><i>Accounting for Impairment of Goodwill</i> In accordance with the accounting standard for goodwill and other intangible assets, we perform goodwill impairment reviews annually, or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable.</p> <p>During the year ended December 31, 2009, we completed annual goodwill impairment reviews of both the Europe reporting unit and the Asia-Pacific reporting unit and concluded that there was no impairment as the fair value of these reporting units exceeded their carrying value.</p> | <p>We use both the income and market approach in step one of our goodwill impairment reviews and weight the results of both equally. Under the income approach, we develop a five-year cash flow forecast and use our weighted-average cost of capital applicable to our reporting units as discount rates. This requires assumptions and estimates derived from a review of our actual and forecasted operating results, approved business plans, future economic conditions and other market data.</p> <p>These assumptions require significant management judgment and are inherently subject to uncertainties.</p> | <p>Future events, changing market conditions and any changes in key assumptions may result in an impairment charge. While we have never recorded an impairment charge against our goodwill to date, the development of adverse business conditions in our Asia-Pacific or European reporting units, such as higher than anticipated customer churn or significantly increased operating costs, or significant deterioration of our market comparables that we use in the market approach, could result in an impairment charge in future periods.</p> <p>As of December 31, 2009, goodwill attributable to the Asia-Pacific reporting unit and the Europe reporting unit was \$18.5 million and \$362.6 million, respectively. Any potential impairment charge against our goodwill would not exceed the amounts recorded on our consolidated balance sheets.</p> |

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| Description | Judgments and Uncertainties | Effect if Actual Results Differ From Assumptions |
|--|--|---|
| <p>Accounting for Property, Plant and Equipment We have a substantial amount of property, plant and equipment recorded on our consolidated balance sheet. The vast majority of our property, plant and equipment represent the costs incurred to build out or acquire our IBX data centers around the world. Our IBX data centers are long-lived assets. The majority of our IBX data centers are in properties that are leased. We depreciate our property, plant and equipment using the straight-line method over the estimated useful lives of the respective assets (subject to the term of the lease in the case of leased assets or leasehold improvements).</p> <p>Accounting for property, plant and equipment involves a number of accounting issues including determining the appropriate period in which to depreciate such assets, making assessments for leased properties to determine whether they are capital or operating leases, capitalizing interest during periods of construction and assessing the asset retirement obligations required for certain leased properties that require us to return the leased properties back to their original condition at the time we decide to exit a leased property.</p> | <p>While there are numerous judgments and uncertainties involved in accounting for property, plant and equipment that are significant, arriving at the estimated useful life of an asset requires the most critical judgment for us and changes to these estimates would have the most significant impact to our financial position and results of operations. When we lease a property for our IBX data centers, we generally enter into long-term arrangements with initial lease terms of at least 8-10 years and with renewal options available to us. During the next several years, a number of leases for our IBX data centers will start to come up for renewal. As we start approaching the ends of these initial lease terms, we will need to reassess the estimated useful lives of our property, plant and equipment. In addition, we may find that our estimates for the useful lives of non-leased assets may also need to be revised periodically. In many cases, we arrived at these estimates during 1999 when we opened our first three IBX data centers. We reassessed the estimated useful lives of certain of our property, plant and equipment during the third quarter of 2009 and we expect we will continue to periodically review such estimates and further changes in the future are possible.</p> | <p>During the third quarter of 2009, we revised the estimated useful lives of certain of our property, plant and equipment. As a result, we recorded \$12.0 million of lower depreciation expense for the year ended December 31, 2009, due to extending the estimated useful lives of certain of our property, plant and equipment. We undertook this review due to our determination that we were generally using certain of our existing assets longer than originally anticipated and, therefore, the estimated useful lives of certain of our property, plant and equipment has been lengthened. This change was accounted for as a change in accounting estimate on a prospective basis effective July 1, 2009 under the accounting standard for change in accounting estimates.</p> <p>In addition, in the fourth quarter of 2009, we recorded a \$4.2 million decrease in depreciation expense as an out-of-period adjustment related to incorrectly depreciating certain assets. This \$4.2 million out-of-period adjustment represents the correction of errors attributable to the nine months ended September 30, 2009 and the years ended December 31, 2008 and 2007, which we have concluded were not material to any previously-reported historical quarterly periods or results of operations for the nine months ended September 30, 2009 and to any previously-reported historical annual or quarterly periods for the years ended December 31, 2008 or 2007.</p> |

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| Description | Judgments and Uncertainties | Effect if Actual Results Differ From Assumptions |
|-------------|-----------------------------|--|
| | | As of December 31, 2009 and 2008, we had property, plant and equipment of \$1.8 billion and \$1.5 billion, respectively, and for the years ended December 31, 2009, 2008 and 2007, we recorded depreciation expense of \$168.0 million, \$152.4 million and \$97.9 million, respectively. Further changes in our estimated useful lives of our property, plant and equipment could have a significant impact to our results of operations. |

Recent Accounting Pronouncements

See "Recent Accounting Pronouncements" in Note 1 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

BUSINESS

Overview

We provide global network neutral data center services. Global enterprises, content providers, financial services companies and network service providers rely upon our insight and expertise to protect and connect their most valued information assets. We operate 49 International Business Exchange® (IBX) centers, or IBX data centers, across 18 markets in North America, Europe and Asia-Pacific where customers directly interconnect with a networked ecosystem of partners and customers. More than 360 network service providers offer access to more than 90% of the world's Internet routes inside our IBX data centers. This access to Internet routes provides our customers improved reliability and streamlined connectivity for optimized business transactions, while significantly reducing costs by reaching a critical mass of networks within a centralized physical location.

As the world becomes increasingly more information-driven, businesses choose us for the delivery of high levels of operational availability, the optimized delivery of their most critical data assets and the leading insight of our expert staff. Based on our network-neutral model, our ability to enable business ecosystems across various industries and the quality of our IBX data centers, we have established a critical mass of customers which continues to drive new and existing customer growth and bookings. A supply and demand imbalance in the data center market has contributed to our revenue growth. In addition, as a result of a largely fixed cost model, any growth in revenue would likely drive incremental margins and increased operating cash flow; however, the costs of a new IBX data center at initial opening have a negative effect on earnings until the data center generates sufficient revenues to cover these costs.

Our network-neutral business model contributes to our success in the market. We offer customers direct interconnection to an aggregation of bandwidth providers rather than focusing on selling a particular network, including the world's top carriers, Internet Service Providers (ISPs), broadband access networks (DSL / cable) and international carriers. AOL, at&t, British Telecom, Cable & Wireless, Comcast, Level 3, NTT, Qwest, SingTel, Sprint and Verizon Business are all currently located within our IBX data centers. Access to such a wide variety of networks has attracted a variety of customers, in various business sectors, including:

- Content Providers (eBay, Hulu, MSN, MySpace, Sony, Yahoo!, Zynga Game Network)
- Enterprise (Amazon.com, Capgemini, Deloitte & Touche, NASA, Salesforce.com, The McGraw-Hill Companies, United Stationers)
- Financial Companies (ACTIV Financial, BOX, Chi-X, Deutsche Börse Group, DirectEdge, Quantlab, Thomson Reuters)

Our services are primarily enabled through a global service delivery platform comprised of all 49 IBX data centers for colocation, interconnection and managed IT infrastructure services.

- Colocation services include cabinets, power, operations space and storage space for customers' colocation needs.
- Interconnection services include cross connects, as well as switch ports on the Equinix Exchange service. These services provide scalable and reliable connectivity that allows customers to exchange traffic directly with the service provider of their choice or directly with each other, creating an optimized performing business ecosystem for the exchange of data between strategic partners.
- Managed IT infrastructure services allow customers to leverage our significant telecommunications expertise, maximize the benefits of our IBX data centers and optimize their infrastructure and resources.

The market for our services has historically been served by large telecommunications carriers which have bundled their telecommunications and managed services with their colocation offerings. In addition, some of our customers, such as AOL and MSN, build and operate their own data centers for their large infrastructure deployments, called server farms. However, these customers rely upon our IBX data centers for many of their critical interconnection relationships.

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The need for large, wholesale outsourced data centers is also, more recently, being addressed by real estate investment trusts (REITs) that build large data centers to meet customers' needs for standalone data centers, a different customer segment than we serve. However, with the increasing cost and complexity of the power and cooling requirements of today's data center equipment, there continues to be a supply and demand imbalance in the market. Demand continues to outpace supply as a result of the current credit contraction, which is creating a financial strain on many data center operators, limiting their ability to create new supply. We have continued to fund our own planned expansion program, while many other data center operators have slowed or halted their data center builds altogether.

The supply and demand imbalance in the industry has, to date, created a favorable pricing environment for us, as well as an opportunity to increase market share. We have gained many customers that have outgrown their existing data centers or that have realized the benefits of a network-neutral model and the ability to create their own optimized business ecosystems for the exchange of data. Strategically, we will continue to look at attractive opportunities to grow market share and selectively expand our footprint and service offerings. We continue to leverage our global reach and depth to differentiate based upon our ability to support truly global customer requirements in all our markets.

Several factors contribute to this growth in demand, including:

- The continuing growth of consumer Internet traffic from new bandwidth-intensive services, such as video, VoIP, social media, mobile data, gaming, data-rich media, Ethernet and wireless services.
- Significant increases in power and cooling requirements for today's data center equipment. Servers have increased the overall level of power consumed and heat generation by more than two times since 2000 and many legacy-built data centers are unable to accommodate new power and cooling demands.
- The growth of enterprise applications, such as Software-as-a-Service (SaaS), and disaster recovery, and the adoption of cloud computing technology services.
- The financial services market is experiencing tremendous growth with the shift to electronic trading and increased volume of peak messages (transactions per second), requiring optimized data exchange through business ecosystems.
- The growth of "proximity communities" that rely on immediate physical colocation with their strategic partners and customers, such as financial exchange ecosystems for electronic trading and settlement.
- The high capital costs associated with building and maintaining "in-sourced" data centers creates an opportunity for capital savings by leveraging an outsourced model.

Industry Background

The Internet is a collection of numerous independent networks interconnected to form a network of networks. Users on different networks are able to communicate with each other through interconnection services between these networks. For example, when a person sends an email to someone that uses a different provider for his or her connectivity (e.g., Comcast versus Verizon), the email must pass from one network to the other in order to get to its final destination. We provide a physical point at which that interconnection can occur.

In order to accommodate the rapid growth of Internet traffic, an organized approach for network interconnection was needed. The exchange of traffic between these networks became known as peering. Peering is when networks trade traffic at relatively equal amounts and set up agreements to trade traffic often at no charge to the other party. At first, government and non-profit organizations established places where these networks could exchange traffic, or peer, with each other—these points were known as network access points, or NAPs. Over time, many NAPs became a natural extension of carrier services and were run by such companies as MFS (now a part of Verizon Business), Sprint, Ameritech and Pacific Bell (both now known as at&t).

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Ultimately, these NAPs were unable to scale with the growth of the Internet and the lack of “neutrality” by the carrier owners of these NAPs created a conflict of interest with the participants. This created a market need for network-neutral interconnection points that could accommodate the rapidly growing need to increase performance for enterprise and consumer users of the Internet, especially with the rise of important content providers such as AOL, Google, Microsoft, Yahoo! and others. In addition, the providers, as well as a growing number of enterprises, required a more secure and reliable solution for direct connection to a variety of telecommunications networks as the importance of their Internet operations continued to grow.

To accommodate Internet traffic growth, the largest of these networks left the NAPs and began trading traffic by placing private circuits between each other. Peering, which once occurred at the NAP locations, was moved to these private circuits. Over the years, these circuits became expensive to expand and could not be built quickly enough to accommodate traffic growth. This led to a need by the large carriers to find a more efficient way to exchange network traffic or peer. As a result, many customers satisfy their requirements for peering through data center service providers like us because it permits them to peer with the networks they require within one location, using simple direct connections. Their ability to peer across the room, instead of across a metro area, has increased the scalability of their operations while decreasing network costs.

The interconnection model has further evolved over the years to include new services offerings. Starting with the peering and network communities, interconnection has since been used for new network services including carrier Ethernet, MPLS VPN and mobility services, in addition to traditional international private line and voice services. The industry continues to evolve with a set of new service offerings where interconnection is often used to solve the network-to-network interconnection challenges.

In addition, the enterprise customer segment is also evolving. In the past, most enterprises opted to keep their data center requirements in house. However, several recent trends have led more and more enterprise CIOs to consider and/or choose to outsource some or all of their data center requirements. The combination of globalization, the proliferation of bandwidth intensive Internet-facing applications and rich media content, the rise of virtualization and cloud computing, business continuity and disaster recovery needs, and most importantly the current economic crisis, have meant that enterprise CIOs must increasingly try to do more with less. Meanwhile, the biggest challenge for data center and operations managers is being out of DC space and power. With the typical in-house datacenter ranging in size from 2,000 to 40,000 square feet, and with very limited optical fiber availability, many CIOs struggle to find the necessary capital, in the current economic environment, to build out and connect their existing facilities. This is why many industry analysts forecast the colocation market to grow over the next three years at more than a 20% compounded annual growth rate. Thus the scope of the industry for colocation has expanded in terms of market opportunity.

Equinix Value Proposition

More than 2,600 companies, including a diversified mix of content providers, financial companies, global enterprises and network service providers, currently operate within our IBX data centers. These companies derive specific value from the following elements of our service offering:

- **Comprehensive global service offering:** With 49 IBX data centers in 18 markets in the U.S., Europe and Asia-Pacific, we offer a consistent global service.
- **Premium data centers:** Our IBX data centers feature advanced design, security, power and cooling elements to provide customers with industry-leading reliability. While others in the market have business models that include additional offerings, we are focused on data center services and interconnection as our core competency.
- **Dynamic business ecosystems:** Our network-neutral model has enabled us to attract a critical mass of networks that, in turn, attracts other businesses seeking to interconnect within a single location. This ecosystem model, versus connecting to multiple partners in disparate locations, reduces costs and

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- optimizes the performance of data exchange. As we grow and attract an even more diversified base of customers, the value of our IBX data center offering increases.
- **Improved economics:** Customers seeking to outsource their data center operations rather than build their own capital-intensive data centers enjoy significant capital cost savings in this credit-challenged economic environment. Customers also benefit from improved economics on account of the broad access to networks that we provide. Rather than purchasing costly local loops from multiple transit providers, customers can connect directly to more than 360 networks inside our IBX data centers.
 - **Leading insight:** With more than 10 years of industry experience, we have a specialized staff of industry experts who helped build and shape the interconnection infrastructure of the Internet. This specialization and industry knowledge base offer customers a unique consultative value and a competitive advantage.

Our Strategy

Our objective is to expand our global leadership position as the premier network neutral data center operator for content providers, financial companies and global enterprises seeking to protect and connect their most valued information assets. Key components of our strategy include the following:

Continue to build upon our critical mass of network providers and content companies and grow our position within the enterprise and financial sectors We have assembled a critical mass of premier network providers and content companies and have become one of the core hubs of the information-driven world. This critical mass is a key selling point for companies that want to connect with a diverse set of networks to provide the best connectivity to their end-customers and network companies that want to sell bandwidth to companies and interconnect with other networks in the most efficient manner available. Currently, we service more than 360 unique networks, including all of the top tier networks, allowing our customers to directly interconnect with providers that serve more than 90% of global Internet routes. We have a growing mass of key players in the enterprise and financial sectors, such as Bank of America, The Gap, Gannett, IBM, Salesforce.com, Sony and others. We expect the content provider and financial segments to continue to serve as the principal driver of our growth.

Promote our IBX data centers as the most reliable data centers in the industry Data center reliability, power availability and network choice are the most important attributes considered by our customers when they are choosing a data center provider. Our IBX data centers are leading new business models and offer customers advanced security, reliability, optimized delivery performance of dynamic applications and rich content, and redundancy. Our security design in the U.S. IBX data centers includes five levels of biometrics security to access customer cages. Our power infrastructure in the U.S. includes N+1 redundancy for all systems and has delivered 99.999% uptime over the period January 1, 2002 through December 31, 2009. We provide access to more than 360 network service providers. Our global support staff, trained to aid customers with operational support, is available 24 hours a day, 365 days a year.

Leverage the network ecosystem. As networks, content providers, financial services providers and other enterprises locate in our IBX data centers, it benefits their suppliers and business partners to do so as well to gain the full economic and performance benefits of direct interconnection. These partners, in turn, pull in their business partners, creating a “network effect” of customer adoption. Our interconnection services enable scalable, reliable and cost-effective interconnection and optimized traffic exchange thus lowering overall cost and increasing flexibility. The ability to directly interconnect with a wide variety of companies is a key differentiator for us in the market.

Provide new products and services within our IBX data centers We plan to continue to offer additional products and services that are most valuable to our customers as they manage their Internet and network businesses and, specifically, as they attempt to effectively utilize multiple networks. Examples include our

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IBXLink services, which allow customers to easily move traffic between IBX data centers located in the same metro area, or the Financial Exchange service, which allows direct interconnection with electronic financial exchanges, such as the Chicago Mercantile Exchange, NASDAQ and ICAP in markets such as Chicago, Frankfurt, London, New York, Hong Kong and Paris.

Pursue growth in response to customer demand. We continue to evaluate expansion opportunities in select markets based on customer demand. We expect to open new IBX data centers, or IBX data center expansions, in 11 of our 18 markets in 2010. In addition, in October 2009, we entered into a definitive agreement to acquire Switch and Data which will extend our presence into 16 new markets in the U.S. and Canada. Completion of the merger remains subject to the satisfaction or waiver of closing conditions, including the clearance of the transaction by the Department of Justice under the HSR Act.

Our strategy is to continue to grow in select existing markets and possibly expand to additional markets where demand and financial return potential warrant We expect to execute this expansion strategy in a cost-effective and disciplined manner through a combination of acquiring existing data centers through lease or purchase, and building new IBX data centers based on key criteria, such as demand and potential financial return, in each market.

Our Customers

Our customers include carriers and other bandwidth providers, content providers, financial companies and global enterprises. We offer each customer a choice of business partners and solutions based on their colocation, interconnection and managed IT service needs. As of December 31, 2009, we had 2,612 customers worldwide.

Typical customers in our four key customer categories include the following:

| <u>Enterprise</u> | <u>Carriers/Networks</u> | <u>Content Providers</u> | <u>Financial Companies</u> |
|---------------------------|--------------------------|--------------------------|----------------------------|
| Amazon.com | at&t | eBay | ACTIV Financial |
| CapGemini | BT | Hulu | BOX |
| Deloitte & Touche | Comcast | MSN | Chi-X |
| NASA | Deutsche Telecom | MySpace | Deutsche Borse Group |
| Salesforce.com | Qwest | Sony | DirectEdge |
| The McGraw-Hill Companies | Sprint | Yahoo! | Quantlab |
| United Stationers | Verizon | Zynga Game Network | Thompson Reuters |

Customers typically sign renewable contracts of one or more years in length. No single customer accounted for 10% or more of our revenues for the years ended December 31, 2009, 2008 or 2007.

Our Services

We provide a choice of data center services primarily comprised of colocation, interconnection and managed IT infrastructure services.

Colocation Services

Our IBX data centers provide our customers with secure, reliable and fault-tolerant environments that are necessary for optimum Internet commerce interconnection. Our IBX data centers include multiple layers of physical security, scalable cabinet space availability, on-site trained staff 24 hours per day, 365 days a year, dedicated areas for customer care and equipment staging, redundant AC/DC power systems and multiple other redundant and fault-tolerant infrastructure systems. Some specifications or services provided may differ in our Asia-Pacific and European locations in order to properly meet the local needs of customers in these markets.

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Within our IBX data centers, customers can place their equipment and interconnect with a choice of networks or other business partners. We also provide customized solutions for customers looking to package our IBX services as part of their complex solutions. Our colocation products and services include:

Cabinets. Our customers have several choices for colocating their networking, server and storage equipment. They can place the equipment in one of our shared or private cages or customize their space. In Europe, customers can purchase their own private “suite” which is walled off from the rest of the data center. As customers’ colocation requirements increase, they can expand within their original cage (or suite) or upgrade into a cage that meets their expanded requirements. Customers buy the hardware they place in our IBX data centers directly from their chosen vendors. Cabinets (or suites) are priced with an initial installation fee and an ongoing recurring monthly charge.

Power. Power is an element of increasing importance in customers’ colocation decisions. We offer both AC and DC power circuits at various amperages and phases customized to a customer’s individual power requirements. Power is priced with an initial installation fee and an ongoing recurring monthly charge.

IBXflex. IBXflex allows customers to deploy mission-critical operations personnel and equipment on-site at our IBX data centers. Because of the close proximity to their infrastructure within our IBX data centers, IBXflex customers can offer a faster response and quicker troubleshooting solution than those available in traditional colocation facilities. This space can also be used as a secure disaster recovery point for customers’ business and operations personnel. This service is priced with an initial installation fee and an ongoing recurring monthly charge.

Interconnection Services

Our interconnection services enable scalable, reliable and cost-effective interconnection and traffic exchange between our customers. These interconnection services are either on a one-to-one basis with direct cross connects or one-to-many through one of our Equinix Exchange services. In the peering community, we provide an important industry leadership role by acting as the relationship broker between parties who would like to interconnect within our IBX data centers. Our staff holds significant positions in many leading industry groups, such as the North American Network Operators’ Group, or NANOG, and the Internet Engineering Task Force, or IETF. Members of our staff have published industry-recognized white papers and strategy documents in the areas of peering and interconnection, many of which are used by other institutions worldwide in furthering the education and promotion of this important set of services. We expect to continue to develop additional services in the area of traffic exchange that will allow our customers to leverage the critical mass of networks now available in our IBX data centers. Our current exchange services are comprised of the following:

Physical Cross-Connect/Direct Interconnections. Customers needing to directly and privately connect to another IBX data center customer can do so through single or multi-mode fiber. These cross connections are the physical link between customers and can be implemented within 24 hours of request. Cross-connect services are priced with an initial installation fee and an ongoing monthly recurring charge.

Equinix Exchange. Customers may choose to connect to and peer through our Equinix Exchange via a central switching fabric rather than purchase a direct physical cross connection. With a connection to this switch, a customer can aggregate multiple interconnects over one physical connection with up to 10 gigabits of capacity instead of purchasing individual physical cross connects. The Exchange service is offered as a bundled service that includes a cabinet, power, cross connects and port charges. The service is priced per IBX data center with an initial installation fee and an ongoing monthly recurring charge. Individual IBX data center prices increase as the number of participants on the exchange service grows.

Equinix IBXLink. Customers who are located in one IBX data center may need to interconnect with networks or other customers located in an adjacent or nearby IBX data center in the same metro area. IBXLink

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allows customers to seamlessly interconnect between IBX data centers at capacities up to an OC-192, or 10 gigabits per second level. IBXLink services are priced with an initial installation fee and an ongoing monthly recurring charge dependent on the capacity the customer purchases.

Internet Connectivity Services. Customers who are installing equipment in our IBX data centers generally require IP connectivity or bandwidth services. Although many large customers prefer to contract directly with carriers, we offer customers the ability to contract for these services through us from any of the major bandwidth providers in that data center. This service, which is provided in our Asia-Pacific region, is targeted to customers who require a single bill and a single point of support for their entire services contract through us for their bandwidth needs. Internet connectivity services are priced with an initial installation fee and an ongoing monthly recurring charge based on the amount of bandwidth committed.

Carrier Ethernet Exchange Services. We have announced the development of a new Carrier Ethernet Exchange service similar to the Equinix Exchange in four initial markets where customers will be able to connect via a central switching fabric to interconnect between multiple Carrier Ethernet Providers rather than creating individual Network to Network interfaces (NNIs) between individual carriers. The service will build on the benefits of the Internet community and extend the ability to interconnect the high growth Ethernet industry. The new service will be priced per IBX data center with an initial fee and a monthly recurring charge.

Managed IT Infrastructure Services

With the continued growth in Internet traffic, networks, service providers, enterprises and content providers are challenged to deliver fast and reliable service, while lowering costs. With more than 360 Internet Service Providers (ISPs) and carriers located in our IBX data centers, we leverage the value of network choice with our set of multi-network management and other outsourced IT services, including:

Professional Services. Our IBX data centers are staffed with Internet and telecommunications specialists who are on-site and/or available 24 hours a day, 365 days a year. These professionals are trained to perform installations of customer equipment and cabling. Professional services are custom-priced depending on customer requirements.

Smart Hands Services. Our customers can take advantage of our professional “Smart Hands” service, which gives customers access to our IBX data center staff for a variety of tasks, when their own staff is not on site. These tasks may include equipment rebooting and power cycling, card swapping and performing emergency equipment replacement. Services are available on-demand or by customer contract and are priced on an hourly basis.

Equinix Direct. Equinix Direct is a managed multi-homing service that allows customers to easily provision and manage multiple network connections over a single interface. Customers can choose branded networks on a monthly basis with no minimums or long-term commitments. This service is priced with an initial installation fee and ongoing monthly recurring charges, depending on the bandwidth used by the customer.

Sales and Marketing

Sales. We use a direct sales force and channel marketing program to market our services to global enterprises, content providers, financial companies and network service providers. We organize our sales force by customer type as well as by establishing a sales presence in diverse geographic regions, which enables efficient servicing of the customer base from a network of regional offices. In addition to our worldwide headquarters located in Silicon Valley, we have established an Asia-Pacific regional headquarters in Hong Kong, and a European regional headquarters in London. Our U.S. sales offices are located in Boston, Chicago, Los Angeles, New York, Reston, Virginia and Silicon Valley. Our Asia-Pacific sales offices are located in Hong Kong, Singapore, Sydney and Tokyo. Our European sales offices are located in Amsterdam, Dusseldorf, Frankfurt, Geneva, London, Munich, Paris and Zurich.

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Our sales team works closely with each customer to foster the natural network effect of our IBX model, resulting in access to a wider potential customer base via our existing customers. As a result of the IBX interconnection model, IBX data center participants often encourage their customers, suppliers and business partners to also locate in our IBX data centers. These customers, suppliers and business partners, in turn, encourage their business partners to locate in our IBX data centers resulting in additional customer growth. This network effect significantly reduces our new customer acquisition costs. In addition, large network providers or managed service providers may refer customers to us as a part of their total customer solution. We also focus vertical sales specialists selling to support specific industry requirements for network and content providers, financial services, cloud computing and systems integrators and enterprise customer segments.

Marketing. To support our sales effort and to actively promote our brand in the U.S., Asia-Pacific and Europe, we conduct comprehensive marketing programs. Our marketing strategies include active public relations and ongoing customer communications programs. Our marketing efforts are focused on major business and trade publications, online media outlets, industry events and sponsored activities. Our staff holds leadership positions in key networking organizations and we participate in a variety of Internet, Carrier Ethernet, computer and financial industry conferences, placing our officers and employees in keynote speaking engagements at these conferences. We also regularly measure customer satisfaction levels and host key customer forums to ensure customer needs are understood and incorporated in product and service planning efforts. From a brand perspective, we build recognition through sponsoring or leading industry technical forums and participating in Internet industry standard-setting bodies. We continue to develop and host industry educational forums focused on peering technologies and practices for ISPs and content providers.

Our Competition

While a large number of enterprises own their own data centers, many others outsource some or all of their requirements to multi-tenant Internet data center facilities, such as those owned and operated by us. With the current challenging economic environment, we believe that the outsourcing trend is likely to not only continue but also to grow in the coming years. It is estimated that we are one of over 650 companies that provide Internet data center services around the world, ranging in size from firms with a single data center in a single market to firms in over 20 markets. We compete with these firms, which vary in terms of their data center offerings.

Colocation Providers

Colocation data centers are a type of Internet data center that can also be referred to as 'retail' data center space. Typically, colocation data center space is sold on the basis of individual racks/cabinets or cages ranging from 500 to 5,000 square feet in size. Typical customers of colocation providers include:

- Large enterprises with significant IT expertise and requirements
- Small and medium businesses looking to outsource data center requirements
- Internet application providers
- Major Internet content, entertainment and social networking providers
- Shared, dedicated and managed hosting providers
- Telecommunications carriers
- Content delivery networks

Full facility maintenance and systems, including fire suppression, security, power backup and HVAC, are routinely included in managed colocation offerings. A variety of additional services is typically available in colocation facilities, including remote hands technician services and network monitoring services.

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In addition to us, providers that offer colocation services both globally and locally include firms such as Savvis, Verizon Business, ATT, Level 3, Qwest, NTT and COLT.

Carrier-Neutral Colocation

In addition to data center space and power, colocation providers also offer interconnection services. Certain of these providers, known as network or carrier-neutral colocation providers, can offer customers the choice of hundreds of network service providers, or ISPs, to choose from. Typically, customers use interconnection services to buy Internet connectivity, connect voice over IP (VoIP) telephone networks, perform financial exchange and settlement functions or perform business-to-business e-commerce. Carrier-neutral data centers are often located in key network hubs around the world like New York; Ashburn, Virginia; London; Amsterdam; Singapore, and Hong Kong. Two types of data center facilities offering carrier-neutral colocation are used for many network-to-network interconnections:

- A Meet Me Room (MMR) is typically a smaller space, generally 5,000 square feet or less, located in a major carrier hotel and often found in a wholesale data center facility.
- A carrier-neutral data center is generally larger than a MMR and may be a stand-alone building separate from existing carrier hotels.

In addition to us, other providers that, we believe, could be defined as offering carrier-neutral colocation include CoreSite, Interxion, Telecity, Telx, Global Switch, Telehouse, Terremark and Switch and Data.

Wholesale Data Center Providers

Wholesale data center providers lease data center space that is typically sold in cells or pods (i.e., individual white-space rooms) ranging in size from 10,000 to 20,000 square feet, or larger. Wholesale data center providers sell to both enterprises and to colocation providers. These data centers primarily provide space and power without additional services like technicians, remote hands services or network monitoring (although other tenants might offer such services). Wholesale data center providers are typically classified as REITs. Their offerings are conceptually similar to a landlord who provides empty space and basic maintenance services to warehouse tenants.

Sample wholesale data center providers include Digital Realty Trust and Dupont Fabros.

Managed Hosters

Managed hosting services are provided by several firms that also provide data center colocation services. Typically, managed hosting providers can manage server hardware that is owned by either the hosting provider or the customer. They can also provide a combination of comprehensive systems administration, database administration and sometimes application management services. Frequently, this results in managed hosting providers “running” the customer’s servers, although such administration is frequently shared. The provider may manage such functions as operating systems, databases, security and patch management, while the customer will maintain management of the applications riding on top of those systems.

The full list of potential services that can be offered as part of managed hosting is substantial and includes services such as remote management, custom applications, helpdesk, messaging, databases, disaster recovery, managed storage, managed virtualization, managed security, managed networks and systems monitoring. Managed hosting services are typically used for:

- Application hosting by organizations of any size, including large enterprises
- Hosted or managed messaging, including Microsoft Exchange and other complex messaging applications
- Complex or highly scalable web hosting or e-commerce web sites

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- Managed storage solutions (including large drive arrays or backup robots)
- Server disaster recovery and business continuity, including clustering and global server load balancing
- Database servers, applications and services

Examples of managed hosters include Rackspace, Verizon Business, AT&T, SAVVIS, SunGard and Navisite.

Unlike other providers whose core businesses are bandwidth or managed services, we focus on neutral interconnection hubs for content providers, financial companies and global enterprises. As a result, we are free of the limited choices found commonly at other hosting/colocation companies. We compete based on the quality of our IBX data centers, our ability to provide a one-stop global solution in our U.S., European and Asia-Pacific locations, the performance and diversity of our network-neutral strategy, and the economic benefits of the aggregation of top networks and Internet businesses under one roof. We expect to continue to benefit from several industry trends including the consolidation of supply in the colocation market, the need for contracting with multiple networks due to the uncertainty in the telecommunications market, customers' increasing power requirements, enterprise customers' growth in outsourcing, the continued growth of broadband and significant growth in Ethernet as a network alternative, and mobile applications.

Our Business Segment Financial Information

We currently operate in three reportable segments, comprised of our U.S., Europe and Asia-Pacific geographic regions. Information attributable to each of our reportable segments is set forth in Note 16 of Notes to Consolidated Financial Statements included elsewhere in this prospectus.

Employees

As of December 31, 2009, we had 1,301 employees. We had 718 employees based in the U.S., 348 employees based in Europe and 235 employees based in Asia-Pacific. Of those employees, 577 were in engineering and operations, 211 were in sales and marketing and 513 were in management, finance and administration.

Facilities

Our principal executive offices are located at 301 Velocity Way, Fifth Floor, Foster City, CA 94404 and our telephone number is (650) 513-7000.

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

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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 ourselves. 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 us, 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 we merged Pihana and i-STT (a subsidiary of Singapore Technologies Telemedia Pte Ltd) into our internet exchange services business. 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 ourselves 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 us 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 a supplemental briefing has been submitted with respect to claims against one defendant and plaintiffs’ renewed request for further leave to amend. The Court has not yet entered a final Order on the motions to dismiss. We believe that plaintiffs’ claims and alleged damages are without merit and we intend 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.

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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 us, 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 we 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 memorandum of understanding provides that the parties will seek approval of the settlement in Florida state court and that simultaneously, the parties will agree to stay the actions pending in the Delaware Chancery Court and the Florida federal court. The proposed settlement is conditional upon, among other things, the execution of an appropriate stipulation of settlement, 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. We intend to continue to defend the action vigorously if the settlement is not finalized.

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.

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MANAGEMENT

The following table provides information regarding our executive officers and directors as of December 31, 2009:

| <u>Name</u> | <u>Age</u> | <u>Position(s)</u> |
|---------------------|------------|---|
| Stephen Smith | 53 | Chief Executive Officer and President, Director |
| Keith Taylor | 48 | Chief Financial Officer |
| Peter Ferris | 52 | President, Equinix U.S. |
| Eric Schwartz | 43 | President, Equinix Europe |
| Jarrett Appleby | 48 | Chief Marketing Officer |
| Steven Clontz | 59 | Director |
| Steven Eng | 53 | Director |
| Gary Hromadko | 57 | Director |
| Scott Kriens | 52 | Director |
| Irving Lyons, III | 60 | Director |
| Christopher Paisley | 57 | Director |
| Peter Van Camp | 53 | Executive Chair |

Executive Officers

Stephen Smith has served as our chief executive officer and president and as a member of our board of directors since April 2007. Prior to joining us, Mr. Smith served as senior vice president at HP Services, a business segment of Hewlett-Packard Co., from January 2005 to October 2006. Prior to joining Hewlett-Packard Co., Mr. Smith served as vice president of global professional and managed services at Lucent Technologies Inc., a communications solutions provider, from September 2003 to January 2005. From October 1987 to September 2003, he spent 17 years with Electronic Data Systems Corporation (“EDS”), a business and technology solutions company, in a variety of positions, including chief sales officer, president of EDS Asia-Pacific, and president of EDS Western Region. Mr. Smith serves on the board of directors of 3PAR Inc. and one privately held company.

Keith Taylor has served as our chief financial officer since September 2005. From February 2001 to September 2005, Mr. Taylor served as our vice president, finance and chief accounting officer. In addition, from February 1999 to February 2001, Mr. Taylor served as our director of finance and administration. Before joining us, Mr. Taylor was employed by International Wireless Communications, Inc., an operator, owner and developer of wireless communication networks, as vice president finance and interim chief financial officer. Prior to joining International Wireless Communications, Inc., Mr. Taylor was employed by Becton Dickinson & Company, a medical and diagnostic device manufacturer, as a senior sector analyst for the diagnostic businesses in Asia, Latin America and Europe.

Peter Ferris has served as president, Equinix U.S. since January 2008. Previously, he served as our senior vice president, worldwide sales from December 2006 to January 2008 and as vice president, worldwide sales from July 1999 to December 2006. During the period from June 1997 to July 1999, Mr. Ferris was vice president of sales for Frontier Global Center, a provider of complex web site hosting services. From June 1996 to June 1997, Mr. Ferris served as vice president, eastern sales at Genuity Inc., an Internet services provider. From December 1993 to June 1996, Mr. Ferris was vice president, mid-Atlantic sales at MFS DataNet Inc., a telecommunications services provider.

Eric Schwartz has served as president, Equinix Europe since June 2008. Previously, he served as our chief development officer from January 2008 to June 2008 and as vice president, strategy and services from May 2006 to January 2008. Prior to joining us, Mr. Schwartz was vice president of IP Communications at BellSouth, a telecommunications company, where he was employed from November 1997 to February 2006.

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Jarrett Appleby has served as our chief marketing officer since December 2008. Prior to joining us, Mr. Appleby served as chief strategy and marketing officer at Reliance Globalcom LTD, a global telecommunications company, from August 2006 to December 2008. From January 2006 to December 2007, Mr. Appleby was founder and chief executive officer of ILV Group, a business advisory and consulting company. Before starting ILV Group, Mr. Appleby served as senior vice president of strategy & corporate development for MCI (now Verizon Business), a global telecommunications company, from September 2005 to February 2006, and as senior vice president of MCI Solutions (now Verizon Business), a managed services company, from May 2003 to September 2005.

Board of Directors

Steven Clontz has served as a member of our board of directors since April 2005. Mr. Clontz is currently managing director—North America and Europe of Singapore Technologies Telemedia, a telecommunications and information services company. Mr. Clontz was chief executive officer of StarHub Ltd., a telecommunications and cable television company, from January 1999 to December 2009. Mr. Clontz serves on the board of directors of InterDigital Communications Corp. and StarHub Ltd., both public companies, and several privately held company and subsidiary boards. Mr. Clontz is also a non-director member of the Executive Committee of Global Crossing Limited.

Steven Eng has served as a member of our board of directors since December 2002. Mr. Eng has served as chief technology officer of Harris IT Services, a business unit of Harris Corporation, an international communications and information technology company, since August 2009. Prior to joining Harris Corporation, Mr. Eng was a vice president of solutions architecture at Multimax, Inc. (formerly Netco Government Services, and prior to that, WAM!NET Government Services, Inc.), a data communications company, from April 2002 to August 2009. Prior to joining WAM!NET, Mr. Eng served as a vice president of Exodus Communications from March 1995 to September 2001. Mr. Eng served on the board of directors of i-STT Singapore prior to its merger with us.

Gary Hromadko has served as a member of our board of directors since June 2003. Mr. Hromadko has been a venture partner at Crosslink Capital, a venture capital firm, since June 2002. In addition to his responsibilities with Crosslink Capital, Mr. Hromadko has been active as a private investor since 1993. Mr. Hromadko serves on the board of directors of several privately held companies.

Scott Kriens has served as a member of our board of directors since July 2000. Mr. Kriens has served as chairman of the board of directors of Juniper Networks, Inc., a publicly traded Internet infrastructure solutions company, since September 2008. From October 1996 to September 2008, Mr. Kriens served as Juniper's chief executive officer and chairman of the board of directors. From April 1986 to January 1996, Mr. Kriens served as vice president of sales and vice president of operations at StrataCom, Inc., a telecommunications equipment company, which he co-founded in 1986.

Irving Lyons, III has served as a member of our board of directors since February 2007. Mr. Lyons has been a principal of Lyons Asset Management, a California-based private investment firm, since January 2005. From December 1993 to January 2005, Mr. Lyons was employed at ProLogis, a global provider of distribution facilities and services, where he served as chief investment officer from March 1997 to December 2004 and as vice chairman of the board from December 2001 to January 2005. Mr. Lyons serves on the board of directors of BRE Properties, Inc. and ProLogis, both public companies.

Christopher Paisley has served as a member of our board of directors since July 2007. Mr. Paisley has been the Dean's Executive Professor of Accounting and Finance at the Leavey School of Business at Santa Clara University since January 2001. From September 1985 until May 2000, Mr. Paisley was the senior vice president of finance and chief financial officer of 3Com Corporation. Mr. Paisley currently serves as a director of 3PAR Inc. and Fortinet, Inc., and as chairman of the board of directors of Volterra Semiconductor Corporation, all public companies, and as a director of several privately held companies.

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Peter Van Camp has served as our executive chair since April 2007. Prior to becoming executive chair, Mr. Van Camp served as our chief executive officer and as a director since May 2000 and as president since March 2006. In addition, in December 2005, Mr. Van Camp was re-elected as chairman of the board, having previously served in that capacity from June 2001 to December 2002. From January 1997 to May 2000, Mr. Van Camp was employed at UUNET, the Internet division of MCI (formerly known as WorldCom), where he served as president of Internet markets and as president of the Americas region. During the period from May 1995 to January 1997, Mr. Van Camp was president of CompuServe Network Services, an Internet access provider. Before holding this position, Mr. Van Camp held various positions at CompuServe, Inc. during the period from October 1982 to May 1995.

DESCRIPTION OF NOTES

The Company will issue the notes under an indenture (the “*Indenture*”) between itself and U.S. Bank National Association, as Trustee (the “*Trustee*”). The following is a summary of the material provisions of the Indenture. The Indenture will comply with the Trust Indenture Act of 1939. The terms of the notes include those stated in the Indenture and those made part of the Indenture by reference to certain provisions of the Trust Indenture Act. You can find definitions of certain capitalized terms used in this description under “—Certain Definitions.” For purposes of this section, references to the “*Company*” include only Equinix, Inc. and not its subsidiaries. You are encouraged to read the Indenture because it, and not this description, defines your rights as a holder of the notes. Copies of the Indenture are available upon request to the Company at the address indicated under “Where You Can Find Additional Information” in this prospectus.

The Company will issue the notes in fully registered form in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The Trustee will initially act as Paying Agent and Registrar for the notes. The notes may be presented for registration or transfer and exchange at the offices of the Registrar. The Company may change any Paying Agent and Registrar without notice to holders of the notes (the “*Holder*s”). The Company will pay principal (and premium, if any) on the notes at the Trustee’s corporate office in New York, New York. At the Company’s option, interest may be paid at the Trustee’s corporate trust office or by check mailed to the registered address of Holders.

Principal, Maturity and Interest

The Company is issuing \$500.0 million aggregate principal amount of notes in this offering and, subject to compliance with the limitations described under “—Certain Covenants—Limitation on Incurrence of Additional Indebtedness,” may issue an unlimited principal amount of additional notes at later dates under the same Indenture (the “*Additional Notes*”). Any *Additional Notes* that the Company issues in the future will be identical in all respects to the notes that the Company is issuing now and will form a single series with the notes offered hereby, except that notes issued in the future will have different issuance dates and may have different issuance prices. Unless the context requires otherwise, references to “notes” for all purposes of the Indenture and this “Description of Notes” include any *Additional Notes* that are actually issued.

The notes will mature on _____, 2018.

Interest on the notes will accrue at a rate of _____ % per annum and will be payable semi-annually in arrears on _____ and _____, commencing on _____, 2010. The Company will pay interest to those persons who were holders of record on the _____ or _____ immediately preceding each interest payment date. Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The notes will not be entitled to the benefit of any mandatory sinking fund.

Ranking

The notes will be general senior obligations of the Company. The Holders’ right to payment under these notes will be:

- effectively subordinated to all of the existing and any future secured indebtedness of the Company, including debt outstanding under any Bank Facility or secured by any mortgage, to the extent of the assets securing such debt;
- structurally subordinated to any existing and future indebtedness and other liabilities (including trade payables) of any Subsidiaries of the Company;

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- equal in right of payment to all existing and any future senior indebtedness of the Company; and
- senior in right of payment to any existing and future subordinated indebtedness of the Company.

At December 31, 2009, after giving pro forma effect to the offering, the Company had total consolidated indebtedness of approximately \$2.0 billion, none of which was secured indebtedness of Equinix. At such date, the Subsidiaries of the Company had approximately \$889.2 million of indebtedness and other liabilities (including trade payables but excluding intercompany items and liabilities of a type not required to be reflected on a balance sheet of such Subsidiaries).

Redemption

Other than as set forth below, the notes are not redeemable prior to maturity.

At any time prior to _____, 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 _____ % 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.

On or after _____, 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 _____ of the years indicated below:

| | <u>Redemption price of the notes</u> |
|---------------------|--------------------------------------|
| 2014 | % |
| 2015 | % |
| 2016 and thereafter | 100.00% |

At any time prior to _____, 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.

Selection and Notice of Redemption

In the event that the Company chooses to redeem less than all of the notes, selection of the notes for redemption will be made by the Trustee:

1. in compliance with the requirements of the principal national securities exchange, if any, on which the notes are listed; or
2. if the notes are not listed on a national securities exchange, on *pro rata* basis, by lot or by such method as the Trustee shall deem fair and appropriate;

subject in each case to DTC procedures.

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No notes of a principal amount of \$2,000 or less shall be redeemed in part. Notice of redemption will be mailed by first-class mail at least 30 but not more than 60 days before the redemption date to each Holder of notes to be redeemed at its registered address. If any note is to be redeemed in part only, then the notice of redemption that relates to such note must state the portion of the principal amount thereof to be redeemed. A new note in a principal amount equal to the unredeemed portion thereof will be issued in the name of the Holder thereof upon cancellation of the original note (or appropriate adjustments to the amount and beneficial interests in a global note will be made). On and after the redemption date, interest will cease to accrue on 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.

Mandatory Redemption; Offers to Purchase; Open Market Purchases

We are not required to make any mandatory redemption or sinking fund payments with respect to the notes. However, under certain circumstances, we may be required to offer to purchase notes as described under “—Change of Control” and “—Certain Covenants—Limitation on Asset Sales.” We may at any time and from time to time purchase notes in the open market or otherwise, subject to compliance with applicable securities laws.

Holding Company Structure

The Company is a holding company for its Subsidiaries. Substantially all of the Company’s operations are conducted through its Subsidiaries and the Company derives substantially all its revenues from its Subsidiaries, and substantially all of its operating assets are owned by its Subsidiaries. Accordingly, the Company is dependent upon the distribution of the earnings of its Subsidiaries, whether in the form of dividends, advances or payments on account of intercompany obligations, to service its debt obligations. In addition, the claims of the Holders are subject to the prior payment of all liabilities (whether or not for borrowed money) and to any preferred stock interest of such Restricted Subsidiaries. There can be no assurance that, after providing for all prior claims, there would be sufficient assets available from the Company and its Subsidiaries to satisfy the claims of the Holders of notes. See “Risk Factors—Our subsidiaries will not guarantee the notes. We depend in large part on the cash flow from our subsidiaries to meet our obligations, and your claims will be subordinated to all of the creditors of these subsidiaries.”

Guarantees

On the Issue Date, the notes will not be guaranteed by any of the Company’s Subsidiaries. To the extent that, in the future, any Domestic Restricted Subsidiary of the Company becomes a Guarantor pursuant to the “Subsidiary Guarantees” covenant, such Guarantor will unconditionally, jointly and severally guarantee the Company’s obligations under the Indenture and the notes on a senior unsecured basis. The obligations of each Guarantor under its Guarantee will be limited as necessary to prevent the Guarantee from constituting a fraudulent conveyance or fraudulent transfer under applicable law.

Change of Control

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 “—Redemption,” 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.

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

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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.

If a Change of Control Offer is made, there can be no assurance that the Company will have available funds sufficient to pay the purchase price for all the notes that might be delivered by Holders seeking to accept the Change of Control Offer. In the event the Company is required to purchase outstanding notes pursuant to a Change of Control Offer, the Company expects that it would seek third-party financing to the extent it does not have available funds to meet its purchase obligations. However, there can be no assurance that the Company would be able to obtain such financing. In addition, there can be no assurance that the Company would be able to obtain the consents necessary to consummate a Change of Control Offer from the lenders under agreements governing outstanding Indebtedness that may in the future prohibit the Change of Control Offer. The failure to consummate a Change of Control Offer would constitute an Event of Default under the Indenture. See “Risk Factors—We may not be able to repurchase the notes upon a change of control” for more information.

One of the events that constitutes a Change of Control under the Indenture is the disposition of “all or substantially all” of the Company’s assets. This term has not been interpreted under New York law, which is the governing law of the Indenture, to represent a specific quantitative test. As a consequence, if Holders of the notes assert that the Company is required to make a Change of Control Offer and the Company elects to contest such assertion, there is uncertainty as to how a court interpreting New York law would interpret the term. Neither the Board of Directors of the Company nor the Trustee may waive the covenant of the Company to make a Change of Control Offer following a Change of Control. Restrictions in the Indenture described herein on the ability of the Company and its Subsidiaries to incur additional Indebtedness, to grant Liens on the property of the Company and the Restricted Subsidiaries and to make Restricted Payments may also make more difficult or discourage a takeover of the Company, whether favored or opposed by the management or stockholders of the Company. There can be no assurance that the Company or the acquiring party will have sufficient financial resources to effect a Change of Control Offer. Such restrictions may, in certain circumstances, make more difficult or discourage any leveraged buyout of the Company or any of its Subsidiaries by their respective management. However, the Indenture may not afford the Holders protection in all circumstances from the adverse aspects of a highly leveraged transaction, reorganization, amalgamation, restructuring, merger or similar transaction.

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 the 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.

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 Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the “Change of Control” provisions of the Indenture, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the “Change of Control” provisions of the Indenture by virtue thereof.

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Certain Covenants

The Indenture will contain, among others, the following covenants:

Suspension of Covenants.

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 under the Indenture (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 its Restricted Subsidiaries will not be subject to the following provisions of the Indenture:

- (1) “—Limitation on Incurrence of Additional Indebtedness;”
- (2) “—Limitation on Restricted Payments;”
- (3) “—Limitation on Asset Sales;”
- (4) “—Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries;”
- (5) “—Limitation on Preferred Stock of Domestic Restricted Subsidiaries;”
- (6) clause 2 of the first paragraph of “—Consolidation, Merger and Sale of Assets;”
- (7) “—Limitations on Transactions with Affiliates;” and
- (8) “—Subsidiary Guarantees;”

(collectively, the “*Suspended Covenants*”). Upon the occurrence of a Covenant Suspension Event, the Guarantees, if any, of any Guarantors will also be suspended as of such date (the “*Suspension Date*”). 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 withdraw their Investment Grade Rating or downgrade 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, if any, of any Guarantors will be reinstated if such Guarantees are then required by the terms of the Indenture. The period of time between the Suspension Date and the Reversion Date is referred to in this description as the “*Suspension Period*.” 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).

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 paragraph (a) of “—Limitation on Incurrence of Additional Indebtedness” below or one of the clauses set forth in paragraph (b) of “—Limitation on Incurrence of Additional Indebtedness” below (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 paragraph (a) or (b) of “—Limitation on Incurrence of Additional 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 paragraph (b) of “—Limitation on Incurrence of Additional Indebtedness.” Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under “—Limitation on Restricted Payments” will be made as though the covenant described under “—Limitation on Restricted Payments” had been in effect since the Issue Date and throughout the Suspension Period. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under the first paragraph of

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“—Limitation on Restricted Payments.” As described above, however, no Default or Event of Default will 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.

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) The foregoing 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 paragraph (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

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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 the first paragraph above under this covenant, 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 the "Subsidiaries Guarantees" covenant to the extent applicable; and

18. Permitted Asia Pacific Debt.

(c) For purposes of determining compliance with this "Limitation on Incurrence of Additional Indebtedness" covenant, in the event that all or a portion of an item of Indebtedness meets the criteria of more

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than one of the categories of Permitted Indebtedness described in clauses 1 through 18 of paragraph (b) above or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of such covenant, 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 covenant; *provided* that all Indebtedness outstanding under the Bank Facility up to the maximum amount permitted under clause 2 of paragraph (b) above shall be deemed to have been incurred pursuant to clause 2 of paragraph (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 "Limitation on Incurrence of Additional Indebtedness" covenant.

(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 covenant, the maximum amount of Indebtedness that may be incurred pursuant to this covenant 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.

Limitation on Restricted Payments. 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,

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(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 the first paragraph under the "Limitation on Incurrence of Additional Indebtedness" covenant; 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 "—Redemption"); plus:

(z) without duplication, the sum of:

1. 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;
2. 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);
3. 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
4. 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 (1), (2), (3) and (4) above shall not exceed the aggregate amount of all such Investments made subsequent to the Issue Date.

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;

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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 the 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 the 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 the covenant described under "Limitation on Asset Sales," 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 the covenant described under "Limitation on Asset Sales" 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 clause (3) of the covenant described under "Limitation on Asset Sales";
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.

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

Limitation on Asset Sales. 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.

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 the 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 the preceding paragraph (each, a "*Net*

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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 covenant.

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 covenant).

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 “—Merger, Consolidation and Sale of Assets,” 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 covenant, and shall comply with the provisions of this covenant 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 covenant.

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 the 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 the Indenture. Upon completion of each Net Proceeds Offer, the amount of Net Cash Proceeds will be reset at zero.

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 the “Asset Sale” provisions of the Indenture, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the “Asset Sale” provisions of the Indenture by virtue thereof.

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Limitation on Dividend and Other Payment Restrictions Affecting 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:

1. pay dividends or make any other distributions on or in respect of its Capital Stock;
2. 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
3. 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:
 - (a) applicable law, rule, regulation or order;
 - (b) the Indenture, the notes and any Guarantees;
 - (c) customary non-assignment provisions of any contract or any lease, license or sublicense governing a leasehold interest of any Restricted Subsidiary of the Company;
 - (d) 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;
 - (e) agreements existing on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date;
 - (f) the Bank Facility, an agreement governing other Pari Passu Indebtedness permitted to be incurred under the Indenture or, with respect to a Restricted Subsidiary, an agreement evidencing Indebtedness incurred not in violation of the 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;
 - (g) restrictions on the transfer of assets subject to any Lien permitted under the Indenture imposed by the holder of such Lien;
 - (h) restrictions imposed by any agreement to sell assets or Capital Stock permitted under the Indenture to any Person pending the closing of such sale;
 - (i) 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;
 - (j) 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;
 - (k) any amendment to or Refinancing of the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clauses (b), (d), (e) and (f) 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 (b), (d), (e) and (f);

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

(m) 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

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

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.

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:

1. 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

2. in all other cases, the notes or any Guarantee, as the case may be, are equally and ratably secured,

except for:

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

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

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

(d) Liens securing the notes and any Guarantees;

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

(f) Liens securing Refinancing Indebtedness which is incurred to Refinance any Indebtedness which has been secured by a Lien permitted under the Indenture and which has been incurred in accordance with the provisions of the 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

(g) Permitted Liens.

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Consolidation, Merger and Sale of Assets. 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");

(x) 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

(y) 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, and interest on all of the notes and the performance of every covenant of the notes and the 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)(y) above (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 the first paragraph of the "Limitation on Incurrence of Additional Indebtedness" covenant 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)(y) above (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 complies with the applicable provisions of the Indenture and that all conditions precedent in the Indenture relating to such transaction have been satisfied.

For purposes of the foregoing, 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.

Notwithstanding the foregoing clauses 1, 2 and 3, but subject to the proviso in subclause (x) of clause 1(b), the Company may merge with (a) any of its Wholly Owned Restricted Subsidiaries or (b) an Affiliate that is a

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Person that has no material assets or liabilities and which was organized solely for the purpose of reorganizing the Company in another jurisdiction.

The Indenture will provide that upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Company in accordance with the foregoing 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 the 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 the Indenture shall be provided by and for such surviving entity.

To the extent that the notes are guaranteed by one or more Guarantors pursuant to the “Subsidiary Guarantees” covenant, such Guarantors will be subject to similar provisions relating to the consolidation, merger or sale of assets of such Guarantors.

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 paragraph (b) below 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.

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.

(b) The restrictions set forth in this covenant 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 the 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;

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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 the 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.

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 the Indenture on the terms set forth in the 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 the Indenture until such Domestic Restricted Subsidiary is released from its Guarantee as provided in the Indenture.

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.

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 the 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.

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 United States Securities and Exchange Commission (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;

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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 the Company and its Restricted Subsidiaries, excluding in all respects the Unrestricted Subsidiaries.

Notwithstanding anything to the contrary herein, the Company will not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (3) under "—Events of Default" until 90 days after the date any report hereunder is due.

Events of Default

The following events are defined in the Indenture as "*Events of Default*":

- (1) 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;
- (2) 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;
- (3) a default in the observance or performance of any other covenant or agreement contained in the 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 in the case of a default with respect to the "Merger, Consolidation and Sale of Assets" covenant, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);
- (4) 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;
- (5) 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;
- (6) certain events of bankruptcy affecting the Company or any of its Material Subsidiaries; or
- (7) 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

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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 the Indenture).

If an Event of Default (other than an Event of Default specified in clause (6) above with respect to the Company) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding notes may declare the principal of and accrued 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.

If an Event of Default specified in clause (6) above 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.

The Indenture will provide that, at any time after a declaration of acceleration with respect to the notes as described in the preceding paragraphs, the Holders of a majority in principal amount of the notes may rescind and cancel such declaration and its consequences:

1. if the rescission would not conflict with any judgment or decree;
2. 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;
3. 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;
4. if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and
5. in the event of the cure or waiver of an Event of Default of the type described in clause (6) of the description above of Events of Default, the Trustee shall have received an officers' certificate and an opinion of counsel that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

The Holders of a majority in principal amount of the notes may waive any existing Default or Event of Default under the Indenture, and its consequences, except a default in the payment of the principal of or interest on any notes.

Holders of the notes may not enforce the Indenture or the notes except as provided in the Indenture and under the TIA. Subject to the provisions of the Indenture relating to the duties of the Trustee, the Trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request, order or direction of any of the Holders, unless such Holders have offered to the Trustee reasonable indemnity. Subject to all provisions of the Indenture and applicable law, the Holders of a majority in aggregate principal amount of the then outstanding notes have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee.

Under the Indenture, the Company is required to provide an officers' certificate to the Trustee promptly upon any such officer obtaining knowledge of any Default or Event of Default (*provided* that such officers shall provide such certification at least annually whether or not they know of any Default or Event of Default) that has occurred and, if applicable, describe such Default or Event of Default and the status thereof.

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No Personal Liability of Directors, Officers, Employees and Stockholders

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. Such waiver may not be effective to waive liabilities under federal securities law, and it is the view of the Commission that such a waiver is against public policy.

Legal Defeasance and Covenant Defeasance

The Company may, at its option and at any time, elect to have its obligations and the obligations of the Guarantors discharged with respect to the outstanding notes (“*Legal Defeasance*”). Such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding notes, except for:

1. the rights of Holders to receive payments in respect of the principal of, premium, if any, and interest on the notes when such payments are due;
2. the Company’s obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payments;
3. the rights, powers, trust, duties and immunities of the Trustee and the Company’s obligations in connection therewith; and
4. the Legal Defeasance provisions of the Indenture.

In addition, the Company may, at its option and at any time, elect to have the obligations of the Company released with respect to certain covenants that are described in the Indenture (“*Covenant Defeasance*”) and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to the notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, reorganization and insolvency events) described under “— Events of Default” will no longer constitute an Event of Default with respect to the notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

1. the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable U.S. government obligations, 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;
2. in the case of Legal Defeasance, the Company shall have delivered to the Trustee an opinion of counsel in the United States reasonably acceptable to the Trustee confirming that:
 - (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or
 - (b) since the date of the 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

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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;

3. in the case of Covenant Defeasance, 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;

4. 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);

5. such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Indenture (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) 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;

6. 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;

7. 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;

8. the Company shall have delivered to the Trustee an opinion of counsel to the effect 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; and

9. certain other customary conditions precedent are satisfied.

Notwithstanding the foregoing, the opinion of counsel required by clause 2 above with respect to a Legal Defeasance need not be delivered if all notes not theretofore delivered to the Trustee for cancellation (1) have become due and payable or (2) 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.

Satisfaction and Discharge

The 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 the Indenture) as to all outstanding notes when:

1. either:

(a) all the notes theretofore authenticated and delivered (except lost, stolen or destroyed notes which 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

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(b) all notes not theretofore delivered to the Trustee for cancellation (1) have become due and payable or (2) 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 funds in an amount sufficient 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;

2. the Company has paid all other sums payable under the Indenture by the Company; and

3. the Company has delivered to the Trustee an officers' certificate and an opinion of counsel, which opinion may be subject to customary assumptions and exclusions, stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

Modification of the Indenture

Except as provided in the next two succeeding paragraphs, the Company and the Trustee with the consent of the holders of at least a majority in aggregate principal amount of the notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for the notes) may amend the Indenture, the notes or any Guarantees and the holders of at least a majority in aggregate principal amount of the notes outstanding may waive any past default or compliance with any provisions of the Indenture, the notes or any Guarantees.

Without the consent of each holder of an outstanding note, no amendment or waiver may:

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 the 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 the Indenture or the related definitions affecting the ranking of the notes or any Guarantee in a manner which adversely affects the Holders;

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8. release any Guarantor that is a Material Subsidiary from any of its obligations under its Guarantee or the Indenture otherwise than in accordance with the terms of the Indenture; or

9. modify or change the amendment provisions of the notes or the Indenture.

The Indenture and the notes may be amended by the Company and the Trustee without the consent of any holder of the notes to:

1. cure any ambiguity, defect or inconsistency;

2. provide for the assumption by a Surviving Person of the obligations of the Company under the Indenture;

3. 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);

4. 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;

5. 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;

6. make any change that does not adversely affect the rights of any holder of the notes;

7. comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;

8. provide for the issuance of Additional Notes in accordance with the Indenture;

9. evidence and provide for the acceptance of appointment by a successor Trustee;

10. conform the text of the Indenture or the notes to any provision of this "Description of Notes" to the extent that such provision in this "Description of Notes" was intended to be a recitation of a provision of the Indenture or the notes; or

11. 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.

The consent of the holders of the notes is not necessary to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment.

Governing Law

The Indenture will provide that it, the notes and any Guarantees will be governed by, and construed in accordance with, the laws of the State of New York but without giving effect to applicable principles of conflicts of law to the extent that the application of the law of another jurisdiction would be required thereby.

The Trustee

The Indenture will provide that, except during the continuance of an Event of Default, the Trustee will perform only such duties as are specifically set forth in the Indenture. During the existence of an Event of

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Default, the Trustee will exercise such rights and powers vested in it by the 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 his own affairs.

The Indenture and the provisions of the TIA contain certain limitations on the rights of the Trustee, should it become a creditor of the Company, to obtain payments of claims in certain cases or to realize on certain property received in respect of any such claim as security or otherwise. Subject to the TIA, the Trustee will be permitted to engage in other transactions; *provided* that if the Trustee acquires any conflicting interest as described in the TIA, it must eliminate such conflict or resign.

Board Action

Any action required or permitted to be taken by the Board of Directors of the Company pursuant to the terms of the Indenture may be taken by a duly constituted committee of the Board of Directors of the Company.

Certain Definitions

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for the full definition of all such terms, as well as any other terms used herein for which no definition is provided.

“*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.

“*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.

“*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 _____, 2014 (such redemption price being set forth in the table appearing above under the caption “—Redemption”), *plus* (ii) all required interest payments due on the note through _____, 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.

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“*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 “—Merger, Consolidation and Sale of Assets”; (c) any Restricted Payment permitted by the “Limitation on Restricted Payments” covenant 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 the 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.

“*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.

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“*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 the 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 the 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.

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“*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 the 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

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(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)

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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”:

1. 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

2. notwithstanding clause 1 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 the 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.

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“*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 the Indenture (in each case, whether or not non-recurring).

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Notwithstanding the foregoing, for the purpose of the covenant “Limitation on Restricted Payments” only (other than clause (z) of the “Limitation on Restricted Payments” covenant), 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 (z) of the “Limitation on Restricted Payments” covenant.

“*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.

“*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.

“*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 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.

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“*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.

“*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 supplemental indenture in which such Domestic Restricted Subsidiary agrees to be bound by the terms of the 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 the Indenture.

“*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

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(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 the 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.

"*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.

"*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.

"*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 _____, 2010.

"*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.

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“*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).

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

“*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.

“*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”;

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- (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 the 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 the 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 the "Limitation on Asset Sales" covenant;
- (9) Investments resulting from the creation of Liens on the assets of the Company or any of its Restricted Subsidiaries in compliance with the "Limitation on Liens" covenant;
- (10) Investments represented by guarantees that are otherwise permitted under the 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

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(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 Equinix.

"*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;

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

(11) Liens securing Indebtedness under Currency Agreements;

(12) Liens securing Acquired Indebtedness incurred in accordance with the “Limitation on Incurrence of Additional Indebtedness” covenant; *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 the 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 the 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.

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“*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 the “Limitation on Additional Indebtedness” covenant (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.

“*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.

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“*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.

“*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 , 2014; *provided, however*, that if the period from the Redemption Date to , 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.

“*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*:

(1) the Company certifies to the Trustee that such designation complies with the “Limitation on Restricted Payments” covenant; and

(2) 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 the “Limitation on Restricted Payments” covenant, 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 the “Limitation on Restricted Payments” covenant.

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

(1) 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 the "Limitation on Incurrence of Additional Indebtedness" covenant; and

(2) 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.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following are the material U.S. federal income tax consequences of ownership and disposition of the notes. This discussion only applies to notes that are:

- held by those initial holders who purchased such notes in this offering at the “issue price,” which will equal the first price to the public (not including bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) at which a substantial amount of the notes is sold for money; and
- held as capital assets.

This discussion does not describe all of the tax consequences that may be relevant to a holder in light of the holder’s particular circumstances, including alternative minimum tax consequences, or tax consequences applicable to holders subject to special rules, such as:

- certain financial institutions;
- insurance companies;
- dealers in securities;
- persons holding notes as part of a hedge, “straddle,” integrated transaction or similar transactions;
- U.S. Holders (as defined below) whose functional currency is not the U.S. dollar;
- partnerships or other entities classified as partnerships for U.S. federal income tax purposes; or
- tax-exempt entities.

If an entity or arrangement that is classified as a partnership for U.S. federal income tax purposes holds notes, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships holding notes and partners in such partnerships should consult their tax advisors as to the particular U.S. federal income tax consequences of holding and disposing of the notes.

This summary is based on the Internal Revenue Code of 1986, as amended to the date hereof, administrative pronouncements, judicial decisions and final, temporary and proposed Treasury Regulations, changes to any of which subsequent to the date of this prospectus may affect the tax consequences described herein. Persons considering the purchase of notes are urged to consult their tax advisors with regard to the application of the U.S. federal income tax laws to their particular situations as well as any tax consequences arising under the laws of any state, local or foreign taxing jurisdiction.

Tax Consequences to U.S. Holders

As used herein, the term “U.S. Holder” means a beneficial owner of a note that is, for U.S. federal income tax purposes:

- an individual citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state thereof or the District of Columbia; or
- an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

The term “U.S. Holder” also includes certain former citizens and residents of the United States.

Potential Contingent Payment Debt Treatment. Under certain circumstances, Equinix may pay holders amounts in excess of the stated interest and principal payable on the notes or may pay amounts prior to the

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normally scheduled payment dates. For instance, Equinix would be required to offer to repurchase notes in the circumstances described under “Description of Notes—Certain Covenants—Limitation on Asset Sales” and “Description of Notes—Change of Control.” Similarly, Equinix would generally be permitted to repurchase notes at any time prior to , 2013 with the cash proceeds of an Equity Offering, as described under “Description of Notes—Redemption.” Although the issue is not free from doubt, Equinix intends to take the position that the possibility of such payments does not result in the notes being treated as contingent payment debt instruments under the applicable Treasury Regulations. Equinix’s position is not binding on the Internal Revenue Service (the “IRS”). If the IRS successfully takes a contrary position, U.S. Holders would be required to treat any gain recognized on the sale or other disposition of the notes as ordinary income rather than as capital gain. Furthermore, U.S. Holders would be required to accrue interest income on a constant yield basis at an assumed yield determined at the time of issuance of the notes, with adjustments to such accruals when any contingent payments are made that differ from the payments calculated based on the assumed yield. U.S. Holders should consult their tax advisors regarding the tax consequences of the notes being treated as contingent payment debt instruments. The remainder of this discussion assumes that the notes are not treated as contingent payment debt instruments.

Payments of Interest. Stated interest paid on a note will be taxable to a U.S. Holder as ordinary interest income at the time it accrues or is received in accordance with the U.S. Holder’s method of accounting for federal income tax purposes.

Original Issue Discount. For U.S. federal income tax purposes, if the principal amount of a note exceeds the issue price by more than *de minimis* amount, as determined under the applicable Treasury Regulations, the excess is treated as “original issue discount.” In such a case, U.S. Holders of notes would be required to include such original issue discount in income (as ordinary income) for federal income tax purposes as it accrues, in accordance with a constant yield method based on a compounding of interest, before the receipt of cash payments attributable to this income. Under this method, U.S. Holders generally would be required to include in income increasingly greater amounts of original issue discount in successive accrual periods. Accrued original issue discount would increase the U.S. Holder’s tax basis in the notes and any payments on the notes, other than payments of stated interest, would decrease the tax basis.

A U.S. Holder may be permitted to make an election to include in gross income all interest that accrues on a note (including stated interest, acquisition discount, original issue discount, *de minimis* original issue discount, market discount, *de minimis* market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium) in accordance with a constant yield method based on the compounding of interest (“constant yield election”).

Sale, Exchange, Redemption or Retirement of the Notes. Upon the sale, exchange, redemption or retirement of a note, a U.S. Holder will recognize taxable gain or loss equal to the difference between the amount realized on the sale, exchange or retirement and the U.S. Holder’s tax basis in the note. For these purposes, the amount realized does not include any amount attributable to accrued interest. Amounts attributable to accrued interest are treated as interest as described under “—Payments of Interest” above.

Gain or loss realized on the sale, exchange or retirement of a note will generally be capital gain or loss and will be long-term capital gain or loss if at the time of sale, exchange or retirement the note has been held for more than one year. Long term capital gains recognized by non-corporate U.S. Holders will be subject to reduced tax rates. The deductibility of capital losses may be subject to limitations.

Possible Effect of a Consolidation or Merger. In certain situations, Equinix may consolidate or merge into another entity (as described above under “Description of Notes—Change in Control” and “Description of Notes—Consolidation, Merger and Sale of Assets”). Depending on the circumstances, a change in the obligor of the notes as a result of the consolidation or merger could result in a deemed taxable exchange to a U.S. Holder and the modified note could be treated as newly issued at that time, potentially resulting in the recognition of taxable gain or loss.

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Backup Withholding and Information Reporting. Information returns will generally be filed with the IRS in connection with payments on the notes (including accruals of original issued discount, if any) and the proceeds from a sale, exchange, redemption, retirement or other disposition of the notes. A U.S. Holder will be subject to backup withholding on these payments if the U.S. Holder fails to provide its taxpayer identification number to the paying agent and comply with certain certification procedures or otherwise establish an exemption from backup withholding. The amount of any backup withholding from a payment to a U.S. Holder will be allowed as a credit against the U.S. Holder's U.S. federal income tax liability and may entitle the U.S. Holder to a refund, provided that the required information is timely furnished to the IRS.

Tax Consequences to Non-U.S. Holders

As used herein, the term "Non-U.S. Holder" means a beneficial owner of a note that is, for U.S. federal income tax purposes:

- a nonresident alien individual;
- a foreign corporation; or
- a foreign estate or trust.

"Non-U.S. Holder" does not include a nonresident alien individual present in the United States for 183 days or more in the taxable year of disposition of the notes. Such a holder is urged to consult his or her own tax advisor regarding the U.S. federal income tax consequences of the sale, exchange or other disposition of the notes.

Payments on the Notes. Subject to the discussion below concerning backup withholding, payments of principal, interest (including original issue discount, if any) and premium on the notes by Equinix or any paying agent to any Non-U.S. Holder will not be subject to U.S. federal withholding tax, provided that, in the case of interest,

- the Non-U.S. Holder does not own, actually or constructively, 10 percent or more of the total combined voting power of all classes of stock of Equinix entitled to vote and is not a controlled foreign corporation related, directly or indirectly, to Equinix through stock ownership; and
- the beneficial owner of the note certifies on a properly executed IRS Form W-8BEN, under penalties of perjury, that it is not a United States person.

If a Non-U.S. Holder of a note is engaged in a trade or business in the United States, and if interest (including original issue discount, if any) on the note is effectively connected with the conduct of this trade or business, the Non-U.S. Holder, although exempt from the withholding tax discussed in the preceding paragraph, will generally be taxed in the same manner as a U.S. Holder (see "Tax Consequences to U.S. Holders" above), except that the Non-U.S. Holder will be required to provide a properly executed IRS Form W-8ECI in order to claim an exemption from the withholding tax discussed in the preceding paragraph. Holders are urged to consult their own tax advisors regarding whether an applicable income tax treaty provides for a different result and regarding other U.S. tax consequences of the ownership and disposition of notes including the possible imposition of a branch profits tax at a rate of 30% (or a lower treaty rate) on its effectively connected earnings and profits attributable to its notes.

Sale, Exchange or Other Disposition of Notes. Subject to the discussion below concerning backup withholding, a Non-U.S. Holder generally will not be subject to U.S. federal income tax on gain recognized on a sale or other disposition of notes, unless the gain is effectively connected with a trade or business of the Non-U.S. Holder in the United States, subject to an applicable income tax treaty providing otherwise.

If a Non-U.S. Holder is engaged in a trade or business in the United States and gain recognized by the Non-U.S. Holder on a sale or other disposition of notes is effectively connected with a conduct of such trade or business, the Non-U.S. Holder will generally be taxed in the same manner as a U.S. Holder (see "Tax Consequences to U.S. Holders" above), subject to an applicable income tax treaty providing otherwise. Non-U.S.

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Holders whose gain from dispositions of notes may be effectively connected with a conduct of a trade or business in the United States are urged to consult their own tax advisors with respect to the U.S. tax consequences of the ownership and disposition of notes, including the possible imposition of an additional branch profits tax imposed at a rate of 30% (or a lower treaty rate).

Backup Withholding and Information Reporting. Information returns will be filed with the IRS in connection with payments on the notes (including accruals of original issue discount, if any). Unless the Non-U.S. Holder complies with certification procedures to establish that it is not a United States person, information returns may be filed with the IRS in connection with the proceeds from a sale or other disposition of the notes and the Non-U.S. Holder may be subject to backup withholding on payments on the notes or on the proceeds from a sale or other disposition of the notes. The certification procedures required to claim the exemption from withholding tax on interest described above will satisfy the certification requirements necessary to avoid backup withholding as well. The amount of any backup withholding from a payment to a Non-U.S. Holder will be allowed as a credit against the Non-U.S. Holder's U.S. federal income tax liability and may entitle the Non-U.S. Holder to a refund, provided that the required information is timely furnished to the IRS.

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UNDERWRITING

Citigroup Global Markets Inc. and J.P. Morgan Securities Inc. are acting as joint bookrunning managers of the offering and as representatives of the underwriters named below. Subject to the terms and conditions stated in the underwriting agreement dated the date of this prospectus, each underwriter has agreed to purchase, and we have agreed to sell to that underwriter, the principal amount of notes set forth opposite the underwriter's name.

| <u>Underwriter</u> | <u>Principal Amount of Notes</u> |
|--------------------------------|--------------------------------------|
| Citigroup Global Markets Inc. | \$ |
| J.P. Morgan Securities Inc. | |
| Banc of America Securities LLC | |
| Barclays Capital Inc. | |
| Goldman, Sachs & Co. | |
| ING Financial Markets LLC | |
| RBS Securities Inc. | |
| Total | <u>\$ 500,000,000</u> |

The underwriting agreement provides that the obligations of the underwriters to purchase the notes included in this offering are subject to approval of legal matters by counsel and to other conditions. The underwriters are obligated to purchase all the notes if they purchase any of the notes.

Notes sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any notes sold by the underwriters to securities dealers may be sold at a discount from the initial public offering price of up to % of the principal amount of the notes. Any such securities dealers may resell any notes purchased from the underwriters to certain other brokers or dealers at a discount from the initial public offering price of up to % of the principal amount of the notes. If all the notes are not sold at the initial offering price, the underwriters may change the offering price and the other selling terms.

We have agreed that, for a period of 45 days from the date of this prospectus, we will not, without the prior written consent of Citigroup Global Markets Inc., offer, sell, or contract to sell, or otherwise dispose of, directly or indirectly, or announce the offering of, any debt securities issued or guaranteed by us pursuant to an indenture. Citigroup Global Markets Inc. in its sole discretion may release any of the securities subject to these lock-up agreements at anytime without notice.

The following table shows the underwriting discounts and commissions that we are to pay to the underwriters in connection with this offering (expressed as a percentage of the principal amount of the notes).

| <u>Per note</u> | <u>Paid by Equinix, Inc.</u> |
|-----------------|------------------------------|
| | % |

The underwriters have agreed to reimburse us for a portion of our out-of-pocket expenses in connection with the offering. We estimate that our total expenses for this offering will be \$600,000.

In connection with the offering, the underwriters may purchase and sell notes in the open market. Purchases and sales in the open market may include short sales, purchases to cover short positions and stabilizing purchases.

- Short sales involve secondary market sales by the underwriters of a greater number of notes than they are required to purchase in the offering.
- Covering transactions involve purchases of notes in the open market after the distribution has been completed in order to cover short positions.

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- Stabilizing transactions involve bids to purchase notes so long as the stabilizing bids do not exceed a specified maximum.

Purchases to cover short positions and stabilizing purchases, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of the notes. They may also cause the price of the notes to be higher than the price that would otherwise exist in the open market in the absence of these transactions. The underwriters may conduct these transactions in the over-the-counter market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

The underwriters have performed commercial banking, investment banking and advisory services for us from time to time for which they have received customary fees and reimbursement of expenses. The underwriters may, from time to time, engage in transactions with and perform services for us in the ordinary course of their business for which they may receive customary fees and reimbursement of expenses. Certain affiliates of the underwriters act as lenders and/or agents under our bank facilities. J.P. Morgan Securities Inc. is our financial advisor in connection with our proposed acquisition of Switch and Data. In addition, certain affiliates of the underwriters act as lenders and/or agents under the Switch and Data credit facilities.

Because Goldman, Sachs & Co. and/or its affiliates beneficially own more than 5% of our common stock prior to the closing of this offering, Goldman, Sachs & Co. may be deemed to have a “conflict of interest” with us under NASD Rule 2720 of the Financial Industry Regulatory Authority (formerly known as the National Association of Securities Dealers, Inc., or NASD) (“FINRA”). When a FINRA member with a conflict of interest participates in a public offering, NASD Rule 2720 and FINRA Rule 5110 require (subject to certain exceptions) that the initial public offering price may be no higher than that recommended by a “qualified independent underwriter,” as defined in those rules. In accordance with those rules, Citigroup Global Markets Inc. and J.P. Morgan Securities, Inc., as primary members responsible for managing the offering, have performed a due diligence investigation and participated in the preparation of this prospectus and the registration statement of which this prospectus is a part and do not have a conflict of interest and otherwise meet the requirements of FINRA Rule 2720.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments the underwriters may be required to make because of any of those liabilities.

Notice to Prospective Investors in the European Economic Area

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of notes described in this prospectus may not be made to the public in that relevant member state prior to the publication of a prospectus in relation to the notes that has been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

- to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity that has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;

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- to fewer than 100 natural or legal persons (other than qualified investors as defined below) subject to obtaining the prior consent of the representatives for any such offer; or
- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of notes described in this prospectus located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a “qualified investor” within the meaning of Article 2(1)(e) of the Prospectus Directive.

For purposes of this provision, the expression an “offer to the public” in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression “Prospectus Directive” means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

The sellers of the notes have not authorized and do not authorize the making of any offer of notes through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the notes as contemplated in this prospectus. Accordingly, no purchaser of the notes, other than the underwriters, is authorized to make any further offer of the notes on behalf of the sellers or the underwriters.

Notice to Prospective Investors in the United Kingdom

This prospectus is only being distributed to, and is only directed at, persons in the United Kingdom that are qualified investors within the meaning of Article 2(1)(e) of the Prospectus Directive that are also (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the “Order”) or (ii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (each such person being referred to as a “relevant person”). This prospectus and its contents are confidential and should not be distributed, published or reproduced (in whole or in part) or disclosed by recipients to any other persons in the United Kingdom. Any person in the United Kingdom that is not a relevant person should not act or rely on this document or any of its contents.

Notice to Prospective Investors in France

Neither this prospectus nor any other offering material relating to the notes described in this prospectus has been submitted to the clearance procedures of the *Autorité des Marchés Financiers* or of the competent authority of another member state of the European Economic Area and notified to the *Autorité des Marchés Financiers*. The notes have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in France. Neither this prospectus nor any other offering material relating to the notes has been or will be:

- released, issued, distributed or caused to be released, issued or distributed to the public in France; or
- used in connection with any offer for subscription or sale of the notes to the public in France.

Such offers, sales and distributions will be made in France only:

- to qualified investors (*investisseurs qualifiés*) and/or to a restricted circle of investors (*cercle restreint d'investisseurs*), in each case investing for their own account, all as defined in, and in accordance with, articles L.411-2, D.411-1, D.411-2, D.734-1, D.744-1, D.754-1 and D.764-1 of the French *Code monétaire et financier*;
- to investment services providers authorized to engage in portfolio management on behalf of third parties; or

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- in a transaction that, in accordance with article L.411-2-II-1^o-or-2^o-or 3^o of the French *Code monétaire et financier* and article 211-2 of the General Regulations (*Règlement Général*) of the *Autorité des Marchés Financiers*, does not constitute a public offer (*appel public à l'épargne*).

The notes may be resold directly or indirectly, only in compliance with articles L.411-1, L.411-2, L.412-1 and L.621-8 through L.621-8-3 of the French *Code monétaire et financier*.

Notice to Prospective Investors in Hong Kong

The notes may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to notes which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Japan

The notes offered in this prospectus have not been registered under the Securities and Exchange Law of Japan. The notes have not been offered or sold and will not be offered or sold, directly or indirectly, in Japan or to or for the account of any resident of Japan, except (i) pursuant to an exemption from the registration requirements of the Securities and Exchange Law and (ii) in compliance with any other applicable requirements of Japanese law.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to compliance with conditions set forth in the SFA.

Where the notes are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries’ rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the notes pursuant to an offer made under Section 275 of the SFA except

- to an institutional investor (for corporations, under Section 274 of the SFA) or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to an offer that is made on terms that such shares,

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debentures and units of shares and debentures of that corporation or such rights and interest in that trust are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets, and further for corporations, in accordance with the conditions specified in Section 275 of the SFA;

- where no consideration is or will be given for the transfer; or
- where the transfer is by operation of law.

LEGAL MATTERS

The legality of the notes offered hereby will be passed upon for us by Davis Polk & Wardwell LLP, Menlo Park, California. Certain legal matters will be passed upon for the underwriters by Cahill Gordon & Reindel LLP, New York, New York.

EXPERTS

The financial statements as of December 31, 2009 and December 31, 2008 and for each of the three years in the period ended December 31, 2009 and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) as of December 31, 2009 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and
Stockholders of Equinix, Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of stockholders' equity and other comprehensive income, and of cash flows present fairly, in all material respects, the financial position of Equinix, Inc. (the "Company") and its subsidiaries at December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009 based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP
San Jose, CA
February 22, 2010

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EQUINIX, INC.
Consolidated Balance Sheets
(in thousands, except share and per share data)

| | December 31, | |
|---|---------------------|---------------------|
| | 2009 | 2008 |
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 346,056 | \$ 220,207 |
| Short-term investments | 248,508 | 42,112 |
| Accounts receivable, net of allowance for doubtful accounts of \$1,720 and \$2,037 | 64,767 | 66,029 |
| Current portion of deferred tax assets, net | 46,822 | 35,936 |
| Other current assets | 21,734 | 15,227 |
| Total current assets | 727,887 | 379,511 |
| Long-term investments | 9,803 | 45,626 |
| Property, plant and equipment, net | 1,808,115 | 1,492,830 |
| Goodwill | 381,050 | 342,829 |
| Intangible assets, net | 51,015 | 50,918 |
| Deferred tax assets, net | 5,171 | 65,228 |
| Other assets | 55,109 | 57,794 |
| Total assets | <u>\$ 3,038,150</u> | <u>\$ 2,434,736</u> |
| Liabilities and Stockholders' Equity | | |
| Current liabilities: | | |
| Accounts payable and accrued expenses | \$ 99,053 | \$ 74,317 |
| Accrued property, plant and equipment | 109,876 | 89,518 |
| Current portion of capital lease and other financing obligations | 6,452 | 4,499 |
| Current portion of mortgage and loans payable | 58,912 | 52,054 |
| Current portion of convertible debt | — | 19,150 |
| Other current liabilities | 41,166 | 50,455 |
| Total current liabilities | 315,459 | 289,993 |
| Capital lease and other financing obligations, less current portion | 154,577 | 133,031 |
| Mortgage and loans payable, less current portion | 371,322 | 386,446 |
| Convertible debt, less current portion | 893,706 | 608,510 |
| Other liabilities | 120,603 | 100,095 |
| Total liabilities | <u>1,855,667</u> | <u>1,518,075</u> |
| Commitments and contingencies (Note 14) | | |
| Stockholders' equity: | | |
| Preferred stock, \$0.001 par value per share; 100,000,000 shares authorized in 2009 and 2008; zero shares issued and outstanding in 2009 and 2008 | — | — |
| Common stock, \$0.001 par value per share; 300,000,000 shares authorized in 2009 and 2008; 39,315,250 and 37,745,366 shares issued and outstanding in 2009 and 2008 | 39 | 38 |
| Additional paid-in capital | 1,665,662 | 1,524,834 |
| Accumulated other comprehensive loss | (97,238) | (152,800) |
| Accumulated deficit | (385,980) | (455,411) |
| Total stockholders' equity | 1,182,483 | 916,661 |
| Total liabilities and stockholders' equity | <u>\$ 3,038,150</u> | <u>\$ 2,434,736</u> |

See accompanying notes to consolidated financial statements.

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EQUINIX, INC.
Consolidated Statements of Operations
(in thousands, except per share data)

| | Years ended December 31, | | |
|---|--------------------------|------------------|-------------------|
| | 2009 | 2008 | 2007 |
| Revenues | <u>\$882,509</u> | <u>\$704,680</u> | <u>\$419,442</u> |
| Costs and operating expenses: | | | |
| Cost of revenues | 483,420 | 414,799 | 263,768 |
| Sales and marketing | 63,584 | 66,913 | 40,719 |
| General and administrative | 155,324 | 146,564 | 105,794 |
| Restructuring charges | (6,053) | 3,142 | 407 |
| Acquisition costs | 5,155 | — | — |
| Gains on asset sales | — | — | (1,338) |
| Total costs and operating expenses | <u>701,430</u> | <u>631,418</u> | <u>409,350</u> |
| Income from operations | 181,079 | 73,262 | 10,092 |
| Interest income | 2,384 | 8,940 | 15,406 |
| Interest expense | (74,232) | (61,677) | (32,014) |
| Other-than temporary impairment loss on investments | (2,590) | (1,527) | — |
| Other income | 2,387 | 1,307 | 3,047 |
| Loss on debt extinguishment and conversion | — | — | (5,949) |
| Income (loss) before income taxes | 109,028 | 20,305 | (9,418) |
| Income tax benefit (expense) | (39,597) | 87,619 | (473) |
| Net income (loss) | <u>\$ 69,431</u> | <u>\$107,924</u> | <u>\$ (9,891)</u> |
| Earnings (loss) per share: | | | |
| Basic earnings per share | <u>\$ 1.80</u> | <u>\$ 2.91</u> | <u>\$ (0.30)</u> |
| Weighted-average shares | <u>38,488</u> | <u>37,120</u> | <u>32,595</u> |
| Diluted earnings per share | <u>\$ 1.75</u> | <u>\$ 2.79</u> | <u>\$ (0.30)</u> |
| Weighted-average shares | <u>39,676</u> | <u>41,582</u> | <u>32,595</u> |

See accompanying notes to consolidated financial statements.

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EQUINIX, INC.
Consolidated Statements of Stockholders' Equity and Other Comprehensive Income (Loss)
For the Three Years Ended December 31, 2009
(in thousands, except share data)

| | Common stock | | Additional paid-in capital | Accumulated other comprehensive income (loss) | Accumulated deficit | Total stockholders' equity |
|--|--------------|--------|----------------------------|---|---------------------|----------------------------|
| | Shares | Amount | | | | |
| Balances as of December 31, 2006 | 29,516,927 | \$ 29 | \$ 904,573 | \$ 3,870 | \$ (553,444) | \$ 355,028 |
| Issuance of common stock upon follow-on offering | 4,211,939 | 4 | 339,904 | — | — | 339,908 |
| Issuance of common stock upon exercise of common stock options and vesting of restricted stock | 1,336,049 | 2 | 31,583 | — | — | 31,585 |
| Issuance of common stock upon conversion of convertible subordinated debentures | 1,367,090 | 2 | 53,227 | — | — | 53,229 |
| Issuance of common stock under employee stock purchase plans | 120,787 | — | 4,771 | — | — | 4,771 |
| Issuance of stock upon exercise of stock warrants | 8,446 | — | — | — | — | — |
| Issuance of 2.50% convertible subordinated notes | — | — | 52,263 | — | — | 52,263 |
| Stock-based compensation, net of estimated forfeitures | — | — | 42,857 | — | — | 42,857 |
| Comprehensive income (loss): | | | | | | |
| Net loss | — | — | — | — | (9,891) | (9,891) |
| Foreign currency translation loss | — | — | — | (8,069) | — | (8,069) |
| Unrealized gain on investments, net of tax of \$0 | — | — | — | 311 | — | 311 |
| Net comprehensive loss | — | — | — | (7,758) | (9,891) | (17,649) |
| Balances as of December 31, 2007 | 36,561,238 | 37 | 1,429,178 | (3,888) | (563,335) | 861,992 |
| Issuance of common stock upon exercise of common stock options and vesting of restricted stock | 733,130 | 1 | 19,914 | — | — | 19,915 |
| Issuance of common stock under employee stock purchase plans | 119,354 | — | 6,315 | — | — | 6,315 |
| Issuance of common stock upon conversion of convertible subordinated debentures | 331,644 | — | 13,072 | — | — | 13,072 |
| Tax benefit from employee stock plans | — | — | 696 | — | — | 696 |
| Stock-based compensation, net of estimated forfeitures | — | — | 55,659 | — | — | 55,659 |
| Comprehensive income (loss): | | | | | | |
| Net income | — | — | — | — | 107,924 | 107,924 |
| Foreign currency translation loss | — | — | — | (142,140) | — | (142,140) |
| Unrealized loss on interest rate swaps, net of tax of \$4,660 | — | — | — | (6,350) | — | (6,350) |
| Unrealized loss on investments, net of tax of \$169 | — | — | — | (422) | — | (422) |
| Net comprehensive loss | — | — | — | (148,912) | 107,924 | (40,988) |
| Balances as of December 31, 2008 | 37,745,366 | 38 | 1,524,834 | (152,800) | (455,411) | 916,661 |
| Issuance of common stock upon exercise of common stock options and vesting of restricted stock | 933,212 | 1 | 30,388 | — | — | 30,389 |
| Issuance of common stock under employee stock purchase plans | 151,863 | — | 6,617 | — | — | 6,617 |
| Issuance of common stock upon conversion of convertible subordinated debentures | 484,809 | — | 19,150 | — | — | 19,150 |
| Tax benefit from employee stock plans | — | — | 514 | — | — | 514 |
| Issuance of 4.75% convertible subordinated notes | — | — | 80,010 | — | — | 80,010 |
| Issuance of capped call | — | — | (49,654) | — | — | (49,654) |
| Stock-based compensation, net of estimated forfeitures | — | — | 53,803 | — | — | 53,803 |
| Comprehensive income (loss): | | | | | | |
| Net income | — | — | — | — | 69,431 | 69,431 |
| Foreign currency translation gain, net of tax of \$1,485 | — | — | — | 53,624 | — | 53,624 |
| Unrealized gain on interest rate swaps, net of tax of \$1,191 | — | — | — | 1,418 | — | 1,418 |
| Unrealized gain on investments, net of tax of \$373 | — | — | — | 520 | — | 520 |
| Net comprehensive income | — | — | — | 55,562 | 69,431 | 124,993 |
| Balances as of December 31, 2009 | 39,315,250 | \$ 39 | \$1,665,662 | \$ (97,238) | \$ (385,980) | \$ 1,182,483 |

See accompanying notes to consolidated financial statements.

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EQUINIX, INC.
Consolidated Statements of Cash Flows
(in thousands)

| | Years ended December 31, | | |
|--|--------------------------|-------------------|--------------------|
| | 2009 | 2008 | 2007 |
| Cash flows from operating activities: | | | |
| Net income (loss) | \$ 69,431 | \$ 107,924 | \$ (9,891) |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: | | | |
| Depreciation | 167,975 | 152,437 | 97,910 |
| Stock-based compensation | 53,056 | 55,085 | 42,731 |
| Restructuring charges | (6,053) | 3,142 | 407 |
| Amortization of intangible assets | 5,555 | 6,610 | 2,193 |
| Accretion of asset retirement obligation & accrued restructuring charges | 1,581 | 1,682 | 3,136 |
| Amortization of debt issuance costs and debt discount | 18,791 | 11,523 | 7,907 |
| Allowance for doubtful accounts | (15) | 1,582 | 94 |
| Realized net (gains) losses on investments | 2,579 | (498) | (934) |
| Gains on asset sales | — | — | (1,338) |
| Gain on foreign currency hedge | — | — | (1,494) |
| Other items | 1,149 | 1,466 | (153) |
| Changes in operating assets and liabilities: | | | |
| Accounts receivable | 2,277 | (9,152) | (17,997) |
| Deferred tax assets, net | 27,981 | (94,229) | (5,995) |
| Other assets | (10,371) | (7,137) | 12,460 |
| Accounts payable and accrued expenses | 22,762 | 9,937 | (6,682) |
| Accrued restructuring charges | (1,771) | (2,763) | (13,669) |
| Other liabilities | 565 | 29,949 | 11,335 |
| Net cash provided by operating activities | <u>355,492</u> | <u>267,558</u> | <u>120,020</u> |
| Cash flows from investing activities: | | | |
| Purchases of investments | (379,644) | (240,556) | (114,322) |
| Sales of investments | 27,420 | 131,631 | 16,000 |
| Maturities of investments | 179,566 | 114,361 | 80,221 |
| Purchase of Los Angeles IBX property | — | — | (49,059) |
| Purchase of San Jose IBX property | — | — | (71,471) |
| Purchase of IXEurope, net of cash acquired | — | — | (541,792) |
| Purchase of Virtu, net of cash acquired | — | (23,241) | — |
| Purchase of Upminster, net of cash acquired | (28,176) | — | — |
| Purchases of other property, plant and equipment | (369,542) | (447,032) | (376,836) |
| Proceeds from asset sales | — | — | 1,657 |
| Purchase of restricted cash | (896) | (14,234) | (598) |
| Release of restricted cash | 13,015 | 1,031 | — |
| Other investing activities, net | 79 | — | 1,475 |
| Net cash used in investing activities | <u>(558,178)</u> | <u>(478,040)</u> | <u>(1,054,725)</u> |
| Cash flows from financing activities: | | | |
| Proceeds from employee equity awards | 37,006 | 26,230 | 36,356 |
| Proceeds from issuance of common stock | — | — | 339,908 |
| Proceeds from loans payable | 29,474 | 142,373 | 149,606 |
| Proceeds from convertible debt | 373,750 | — | 645,986 |
| Repayment of capital leases and other financing obligations | (5,279) | (3,832) | (2,406) |
| Repayment of mortgage and notes payable | (51,118) | (19,296) | (2,150) |
| Capped call costs | (49,664) | — | — |
| Debt issuance costs | (8,220) | (948) | (22,287) |
| Other financing activities, net | (2,351) | 579 | — |
| Net cash provided by financing activities | <u>323,598</u> | <u>145,106</u> | <u>1,145,013</u> |
| Effect of foreign currency exchange rates on cash and cash equivalents | 4,937 | (5,050) | (2,238) |
| Net increase (decrease) in cash and cash equivalents | 125,849 | (70,426) | 208,070 |
| Cash and cash equivalents at beginning of year | <u>220,207</u> | <u>290,633</u> | <u>82,563</u> |
| Cash and cash equivalents at end of year | <u>\$ 346,056</u> | <u>\$ 220,207</u> | <u>\$ 290,633</u> |
| Supplemental disclosure of cash flow information: | | | |
| Cash paid for taxes | <u>\$ 9,290</u> | <u>\$ 98</u> | <u>\$ 242</u> |
| Cash paid for interest | <u>\$ 63,281</u> | <u>\$ 53,373</u> | <u>\$ 26,900</u> |

See accompanying notes to consolidated financial statements.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business and Summary of Significant Accounting Policies

Nature of Business

Equinix, Inc. (“Equinix” or the “Company”) was incorporated in Delaware on June 22, 1998. Equinix provides global data center services. Global enterprises, content providers, financial companies and network service providers rely upon Equinix’s insight and expertise to protect and connect their most valued information assets. The Company operates 49 International Business Exchange (“IBX”) data centers, or IBX data centers, across 18 markets in North America, Europe and Asia-Pacific where customers directly interconnect with a network ecosystem of partners and customers. More than 360 network service providers offer access to more than 90% of the world’s Internet routes inside the Company’s IBX data centers. This access to Internet routes provides Equinix customers improved reliability and streamlined connectivity while significantly reducing costs by reaching a critical mass of networks within a centralized physical location.

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 \$689,000,000 based on the closing price of Equinix common stock as of October 20, 2009. 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. The Company expects to close the Switch and Data Acquisition in the second quarter of 2010; however, the closing and its timing are subject to regulatory approval as well as the satisfaction or waiver of closing conditions.

Adoption of Recent Accounting Pronouncements and Adjusted Consolidated Financial Statements

The Company changed its accounting principles to reflect the impact of the adoption of a FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) (see “2.50% Convertible Subordinated Notes” in Note 8) and a FASB standard for instruments granted in share-based payment transactions that are considered participating securities prior to vesting and, therefore, should be included in the calculation of EPS, which were effective January 1, 2009. These FASB standards were applied retrospectively; as a result, the Company adjusted comparative consolidated financial statements of prior periods included in the Company’s Form 8-K as filed with the SEC on June 8, 2009.

Basis of Presentation, Consolidation and Foreign Currency

The accompanying consolidated financial statements include the accounts of Equinix and its subsidiaries, including the operations of IXEurope plc (“IXEurope”) from September 14, 2007, Virtu Secure Webservices B.V. (“Virtu”) from February 5, 2008 and Upminster GmbH (“Upminster”) from July 22, 2009 (see Note 2). All significant intercompany accounts and transactions have been eliminated in consolidation.

Foreign exchange gains or losses resulting from foreign currency transactions, including intercompany foreign currency transactions, that are anticipated to be repaid within the foreseeable future, are reported within

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

other income (expense) on the Company's accompanying consolidated statements of operations. For additional information on the impact of foreign currencies to the Company's consolidated financial statements, see "Comprehensive Income (Loss)" below.

Reclassifications

Certain amounts in the accompanying consolidated financial statements have been reclassified to conform to the consolidated financial statement presentation as of and for the year ended December 31, 2009.

Use of Estimates

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

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

The Company considers all highly liquid instruments with an original maturity from the date of purchase of three months or less to be cash equivalents. Cash equivalents consist of money market mutual funds, commercial paper and certificates of deposit with financial institutions with maturities up to 90 days. Short-term investments generally consist of certificates of deposits and commercial paper with original maturities of between 90 days and one year and highly liquid debt securities of corporations, agencies of the U.S. government and the U.S. government. Long-term investments generally consist of debt securities of corporations, agencies of the U.S. government and the U.S. government with maturities greater than 360 days. Short-term and long-term investments are classified as "available-for-sale" and are carried at fair value with unrealized gains and losses reported in stockholders' equity as a component of other comprehensive income. The cost of securities sold is based on the specific identification method. The Company reviews its investment portfolio quarterly to determine if any securities may be other-than-temporarily impaired due to increased credit risk, changes in industry or sector of a certain instrument or ratings downgrades.

Financial Instruments and Concentration of Credit Risk

Financial instruments which potentially subject the Company to concentrations of credit risk consist of cash, cash equivalents and short-term and long-term investments, to the extent outstanding balances exceed federal insurance limits, and accounts receivable. Risks associated with cash, cash equivalents and short-term and long-term investments are mitigated by the Company's investment policy, which limits the Company's investing to only those marketable securities rated at least A-1/P-1 and A-/A3, as determined by independent credit rating agencies.

A significant portion of the Company's customer base is comprised of businesses throughout the U.S. However, a portion of the Company's revenues are derived from the Company's Europe and Asia-Pacific operations. For the year ended December 31, 2009 the Company's revenues were split approximately 61% in the U.S., 26% in Europe and 13% in Asia-Pacific. For the year ended December 31, 2008 the Company's revenues were split approximately 63% in the U.S., 25% in Europe and 12% in Asia-Pacific. For the year ended December 31, 2007 the Company's revenues were split approximately 77% in the U.S., 9% in Europe and 14% in Asia-Pacific. No single customer accounted for greater than 10% of accounts receivables or revenues as of or for the years ended December 31, 2009, 2008 and 2007.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As of December 31, 2009, the Company had outstanding commitments of \$239,110,000 with one lender. These commitments are associated with real estate financing obligations in connection with the Los Angeles IBX Financing (see Note 10), the Mortgage Payable (see Note 9) and the Chicago IBX Financing (see Note 9).

Property, Plant and Equipment

Property, plant and equipment are stated at the Company's original cost or relative fair value for acquired property, plant and equipment. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements and assets acquired under capital leases are amortized over the shorter of the lease term or the estimated useful life of the asset or improvement, unless they are considered integral equipment, in which case they are amortized over the lease term. Pursuant to the accounting standard related to determining the amortization period for leasehold improvements purchased after lease inception or acquired in a business combination, (i) leasehold improvements acquired in a business combination are amortized over the shorter of the useful life of the assets or a term that includes required lease periods and renewals that are deemed to be reasonably assured at the date of acquisition and (ii) leasehold improvements that are placed into service significantly after and not contemplated at or near the beginning of the lease term are amortized over the shorter of the useful life of the assets or a term that includes required lease periods and renewals that are deemed to be reasonably assured at the date the leasehold improvements are purchased.

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 within the below table were affected.

| | Estimated Useful Life | |
|---------------------------------|-----------------------|---------|
| | Original | Revised |
| IBX plant and machinery | 2-13 | 2-25 |
| Leasehold improvements | 10-20 | 10-20 |
| Site improvements | 10-15 | 10-15 |
| Buildings | 40-50 | 30-50 |
| IBX equipment | 2-13 | 2-15 |
| Computer equipment and software | 2-5 | 2-5 |
| Furniture and fixtures | 2-5 | 2-10 |

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 change in accounting estimates.

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 year ended December 31, 2009 (in thousands, except per share amounts):

| | |
|------------------------|-----------|
| Income from operations | \$ 12,020 |
| Net income | 6,934 |
| Earnings per share: | |
| Basic | 0.18 |
| Diluted | 0.17 |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

During the preparation of the Company's financial statements for the year ended December 31, 2009, in conjunction with its reassessment of the estimated useful lives of certain of its property, plant and equipment described above, the Company identified errors in its financial statements for the years ended December 31, 2008 and 2007 and the Company's financial statements as of and for the nine month period ended September 30, 2009. These errors related to an overstatement of depreciation expense in connection with the Company's European operating segment totaling \$1,810,000, \$2,028,000 and \$375,000 for the nine months ended September 30, 2009 and for the years ended December 31, 2008 and 2007, respectively, for a total error correction of \$4,213,000. The Company corrected these errors in its financial statements for the quarter ended December 31, 2009, which reduced depreciation expense for the three months ended December 31, 2009 by \$4,213,000. The Company does not believe that these adjustments are material to the consolidated financial statements for the year ended December 31, 2009 or to any annual or quarterly periods' consolidated financial statements for the years ended December 31, 2008 and 2007 and the nine months ended September 30, 2009. As a result, the Company has not restated any prior period amounts.

Construction in Progress

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

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

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|---------------------------|------------------|------------------|------------------|
| Interest expense | \$ 74,232 | \$ 61,677 | \$ 32,014 |
| Interest capitalized | 12,853 | 7,946 | 10,380 |
| Interest charges incurred | <u>\$ 87,085</u> | <u>\$ 69,623</u> | <u>\$ 42,394</u> |

Asset Retirement Costs

The fair value of a liability for an asset retirement obligation is recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The associated retirement costs are capitalized and included as part of the carrying value of the long-lived asset and amortized over the useful life of the asset. Subsequent to the initial measurement, the Company accretes the liability in relation to the asset retirement obligations over time and the accretion expense is recorded as a cost of revenue. The Company's asset retirement obligations are primarily related to its IBX data centers, of which the majority are leased under long-term arrangements, and, in certain cases, are required to be returned to the landlords in their original condition. All of the Company's IBX data center leases have been subject to significant development by the Company in order to convert them from, in most cases, vacant buildings or warehouses into IBX data centers. The majority of the Company IBX data centers' initial lease terms expire at various dates ranging from 2010 to 2027 and all of them enable the Company to extend the lease terms.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes the activity of the Company's asset retirement obligation liability (in thousands):

| | |
|--|-----------------|
| Asset retirement obligations as of December 31, 2006 | \$ 3,985 |
| Additions | 4,294 |
| Reductions | (166) |
| Accretion expense | 646 |
| Impact of foreign currency exchange | — |
| Asset retirement obligations as of December 31, 2007 | 8,759 |
| Additions | 2,865 |
| Reductions | — |
| Accretion expense | 890 |
| Impact of foreign currency exchange | (250) |
| Asset retirement obligations as of December 31, 2008 | 12,264 |
| Additions | 4,331 |
| Reductions | (75) |
| Accretion expense | 1,149 |
| Impact of foreign currency exchange | 41 |
| Asset retirement obligations as of December 31, 2009 | <u>\$17,710</u> |

Goodwill and Other Intangible Assets

The Company has three reportable segments comprised of 1) the United States, 2) Asia-Pacific and 3) Europe geographic regions. As of December 31, 2009, the Company had goodwill attributable to the Asia-Pacific reporting unit and the Europe reporting unit (see "Goodwill and Other Intangibles" in Note 5). The Company performed its annual impairment review of the Europe reporting unit in the third quarter of 2009 and the Asia-Pacific reporting unit in the fourth quarter of 2009 as prescribed in the accounting standard related to goodwill impairment tests. The Company concluded that its goodwill attributed to the Company's Europe and Asia-Pacific reporting units was not impaired as the fair value of its Europe and Asia-Pacific reporting units exceeded the carrying value of this reporting unit, including goodwill. In order to determine the fair value of the Company's reporting units, the Company utilizes the discounted cash flow and market methods. The Company has consistently utilized both methods in its goodwill impairment tests and weights both results equally. The Company uses both methods in its goodwill impairment tests as it believes both, in conjunction with each other, provide a reasonable estimate of the determination of fair value of the reporting unit – the discounted cash flow method being specific to anticipated future results of the reporting unit and the market method, which is based on the Company's market sector including its competitors. The assumptions supporting the discounted cash flow method, including the discount rate, which was assumed to be 10.0%, were determined using the Company's best estimates as of the date of the impairment review. The Company has performed various sensitivity analyses on certain of the assumptions used in the discounted cash flow method, such as forecasted revenues and discount rate, and notes that no reasonably possible changes would reduce the fair value of the reporting unit to such a level that would cause an impairment charge.

Impairment assessments inherently involve judgment as to assumptions about expected future cash flows and the impact of market conditions on those assumptions. Future events and changing market conditions may impact the Company's assumptions as to prices, costs, growth rates or other factors that may result in changes in the Company's estimates of future cash flows. Although the Company believes the assumptions it used in testing for impairment are reasonable, significant changes in any one of the Company's assumptions could produce a

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

significantly different result. Indicators of potential impairment that might lead the Company to perform interim goodwill impairment assessments include significant and unforeseen customer losses, a significant adverse change in legal factors or in the business climate, a significant adverse action or assessment by a regulator or unanticipated competition.

For further information on goodwill and other intangible assets, see Note 5 below.

Derivatives and Hedging Activities

The Company follows the accounting standard related to derivatives and hedging, which requires the Company to recognize all derivatives on the consolidated balance sheet at fair value. The accounting for changes in the value of a derivative depends on whether the contract is for trading purposes or has been designated and qualifies for hedge accounting. In order to qualify for hedge accounting, a derivative must be considered highly effective at reducing the risk associated with the exposure being hedged. In order for a derivative to be designated as a hedge, there must be documentation of the risk management objective and strategy, including identification of the hedging instrument, the hedged item and the risk exposure, and how effectiveness is to be assessed prospectively and retrospectively.

To assess effectiveness, the Company uses a regression analysis. The extent to which a hedging instrument has been and is expected to continue to be effective at achieving offsetting changes in cash flows is assessed and documented at least quarterly. Any ineffectiveness is reported in current-period earnings. If it is determined that a derivative is not highly effective at hedging the designated exposure, hedge accounting is discontinued. For qualifying cash flow hedges, the effective portion of the change in the fair value of the derivative is recorded in other comprehensive income (loss) and recognized in the consolidated statements of operations when the hedged cash flows affect earnings. The ineffective portions of cash flow hedges are immediately recognized in earnings. If the hedge relationship is terminated, then the change in fair value of the derivative recorded in other comprehensive income (loss) is recognized in earnings when the cash flows that were hedged occur, consistent with the original hedge strategy. For hedge relationships discontinued because the forecasted transaction is not expected to occur according to the original strategy, any related derivative amounts recorded in other comprehensive income (loss) are immediately recognized in earnings. The Company does not use derivatives for speculative or trading purposes.

For further information on derivatives and hedging activities, see Note 6 below.

Fair Value of Financial Instruments

The carrying value of the Company's cash and cash equivalents, short-term and long-term investments represent their fair value, while the Company's accounts receivable, accounts payable and accrued expenses and accrued property, plant and equipment approximate their fair value due primarily to the short-term maturity of the related instruments. The fair value of the Company's convertible debt, which is traded in the market, is based on quoted market prices. The fair value of the Company's mortgage and loans payable, which are not traded in the market, is estimated by considering the Company's credit rating, current rates available to the Company for debt of the same remaining maturities and the terms of the debt.

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

| | December 31, 2009 | | December 31, 2008 | |
|--------------------------------------|-------------------|-------------------|-------------------|-------------------|
| | Carrying Value | Fair Value | Carrying Value | Fair Value |
| <i>Convertible Debt:</i> | | | | |
| Convertible subordinated debentures | \$ — | \$ — | \$ 19,150 | \$ 19,290 |
| 2.50% convertible subordinated notes | 222,943 | 228,935 | 212,524 | 128,552 |
| 3.00% convertible subordinated notes | 395,986 | 461,324 | 395,986 | 251,451 |
| 4.75% convertible subordinated notes | 274,777 | 307,248 | — | — |
| | <u>\$ 893,706</u> | <u>\$ 997,507</u> | <u>\$ 627,660</u> | <u>\$ 399,293</u> |
| <i>Mortgage and Loans Payable:</i> | | | | |
| Mortgage payable | \$ 91,756 | \$ 83,406 | \$ 94,362 | \$ 58,682 |
| Chicago IBX financing | 109,991 | 109,700 | 109,991 | 101,665 |
| Asia-Pacific financing | 64,559 | 60,827 | 87,009 | 77,030 |
| European financing | 130,058 | 111,375 | 130,981 | 93,577 |
| Netherlands financing | 9,311 | 7,941 | 6,485 | 6,485 |
| Other note payable | — | — | 9,672 | 9,672 |
| Singapore financing | 24,559 | 21,739 | — | — |
| | <u>\$ 430,234</u> | <u>\$ 394,988</u> | <u>\$ 438,500</u> | <u>\$ 347,111</u> |

Fair Value Measurements

Effective January 1, 2008, the Company adopted the accounting standard related to fair value measurements. This accounting standard defines fair value as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date,” or the “exit price.” Accordingly, an entity must now determine the fair value of an asset or liability based on the assumptions that market participants would use in pricing the asset or liability, not those of the reporting entity itself. Additionally, this accounting standard establishes a fair value hierarchy, which gives precedence to fair value measurements calculated using observable inputs to those using unobservable inputs. This accounting standard requires entities to disclose financial instruments measured at fair value according to the hierarchy in each reporting period after implementation. The Company elected not to measure any of its financial assets and liabilities at fair value (other than those already measured at fair value) under the accounting standard for the fair value option.

For further information on fair value measurements, see Note 7 below.

Impairment of Long-Lived Assets

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by comparing the carrying amount of an asset to estimated undiscounted future net cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Revenue Recognition

Equinix derives more than 90% of its revenues from recurring revenue streams, consisting primarily of (1) colocation services, such as the licensing of cabinet space and power; (2) interconnection services, such as cross connects and Equinix Exchange ports; (3) managed infrastructure services, such as Equinix Direct and bandwidth and (4) other services consisting of rent. The remainder of the Company's revenues are from non-recurring revenue streams, such as from the recognized portion of deferred installation revenues, professional services, contract settlements and equipment sales. Revenues from recurring revenue streams are generally billed monthly and recognized ratably over the term of the contract, generally one to three years for IBX data center space customers. Non-recurring installation fees, although generally paid in a lump sum upon installation, are deferred and recognized ratably over the longer of the term of the related contract or expected life of the installation. Professional service fees are recognized in the period in which the services were provided and represent the culmination of a separate earnings process as long as they meet the criteria for separate recognition under the accounting standard related to revenue arrangements with multiple deliverables. Revenue from bandwidth and equipment sales is recognized on a gross basis in accordance with the accounting standard related to reporting revenue gross as a principal versus net as an agent, primarily because the Company acts as the principal in the transaction, takes title to products and services and bears inventory and credit risk. To the extent the Company does not meet the criteria for recognizing bandwidth and equipment services as gross revenue, the Company records the revenue on a net basis. Revenue from contract settlements, when a customer wishes to terminate their contract early, is generally recognized on a cash basis, when no remaining performance obligations exist, to the extent that the revenue has not previously been recognized.

The Company occasionally guarantees certain service levels, such as uptime, as outlined in individual customer contracts. To the extent that these service levels are not achieved, the Company reduces revenue for any credits given to the customer as a result. The Company generally has the ability to determine such service level credits prior to the associated revenue being recognized, and historically, these credits have generally not been significant. There were no significant service level credits issued during the years ended December 31, 2009, 2008 and 2007.

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

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

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

and an analysis of historical credits issued. Delinquent account balances are written-off after management has determined that the likelihood of collection is not probable.

Income Taxes

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

As a result of the adoption of an accounting standard update for business combinations on January 1, 2009, the Company's tax provision will be reduced in future periods to the extent that the Company has not recognized the deferred tax assets associated with any subsidiaries acquired in previous business combinations for which goodwill exists. The recognition of such deferred tax assets in the periods subsequent to the adoption of the accounting standard update will benefit the Company's consolidated statements of operations at the time such recognition occurs. Prior to the accounting standard update, such releases were recorded against goodwill.

Stock-Based Compensation

The Company accounts for its stock-based compensation in accordance with the accounting standard for stock compensation. Under the fair value-based recognition provisions of this standard, stock-based compensation cost is measured at the grant date for all stock-based awards made to employees and directors based on the fair value of the award and is recognized as expense over the requisite service period, which is generally the vesting period.

Commencing in March 2008, the Company began granting restricted stock units exclusively to its employees in lieu of stock options. As a result, the Company ceased granting stock options during 2008. The Company used the Black-Scholes option-pricing model to determine the fair value of stock options with only a service condition. Certain of the Company's employee equity awards had vesting criteria based upon the achievement of certain pre-determined Company stock price targets, which the Company refers to as market price conditions. The Company used a Monte Carlo simulation option-pricing model to determine the fair value of restricted stock or restricted stock unit grants that have both a service and market price condition. However, commencing in February 2008, the Company ceased granting equity awards with market price conditions. The determination of the fair value of stock-based awards on the date of grant using an option-pricing model is affected by the Company's stock price as well as assumptions regarding a number of complex and subjective variables. These variables include the Company's expected stock price volatility over the term of the awards, and actual and projected employee stock option exercise behaviors. The Company estimated the expected volatility by using the average historical volatility of its common stock that it believed was the best representative of future volatility. The risk-free interest rate used was based on U.S. Treasury zero-coupon issues with remaining terms similar to the expected term of the equity awards. The Company does not anticipate paying any cash dividends in the foreseeable future and, therefore, the expected dividend rate used was zero. The expected term of options used was calculated by taking the average of the vesting term and the contractual term of the option.

As noted above, beginning in 2008, the Company only grants restricted stock units to its employees in lieu of stock options and these equity awards have only either a service condition or a service and performance

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

condition. Any performance conditions contained in an equity award are tied to the financial performance of the Company or a specific region of the Company. The Company assesses the probability of meeting these performance conditions on a quarterly basis. The majority of the Company's equity awards vest over four years, although certain of the equity awards for executives vest over a range of two to four years. The valuation of restricted stock units with only a service condition or a service and performance condition requires no significant assumptions as the fair value for these types of equity awards is based solely on the fair value of the Company's stock price on the date of grant.

The accounting standard for stock compensation does not allow the recognition of unrealized tax benefits associated with the tax deductions in excess of the compensation recorded (excess tax benefit) until the excess tax benefit is realized (i.e. reduces taxes payable). The Company will recognize a benefit from stock-based compensation in equity if the excess tax benefit is realized by following the "with-and-without" approach. The excess tax benefit that the Company recorded during the years ended December 31, 2009 and 2008 was approximately \$514,000 and \$696,000, respectively. During the year ended December 31, 2007, the Company did not record any excess tax benefit associated with its stock-based compensation.

For further information on stock-based compensation, see Note 12 below.

Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity of a company during a period from transactions and other events and circumstances excluding transactions resulting from investments by owners and distributions to owners. The primary difference between net income (loss) and comprehensive income (loss) for Equinix results from foreign currency translation adjustments and unrealized gains and losses on available-for-sale securities and cash flow hedges (interest rate swaps).

The financial position of foreign subsidiaries is translated using the exchange rates in effect at the end of the period, while income and expense items are translated at average rates of exchange during the period. Gains or losses from translation of foreign operations where the local currency is the functional currency are included as other comprehensive income (loss). The net gains and losses resulting from foreign currency transactions are recorded in net income (loss) in the period incurred and reported within other income and expense. Certain inter-company balances are designated as long-term. Accordingly, exchange gains and losses associated with these long-term inter-company balances are recorded as a component of other comprehensive income (loss), along with translation adjustments. During the year ended December 31, 2009, the U.S. dollar strengthened against certain of the currencies of the foreign countries in which the Company operates. This has significantly impacted the Company's consolidated balance sheets (as evidenced in the Company's foreign currency translation gains), as well as its consolidated statements of operations as amounts denominated in foreign currencies are generally translating into less U.S. dollars. To the extent that the U.S. dollar strengthens further, this will continue to impact the Company's consolidated balance sheets and consolidated statements of operations including the amount of revenue that the Company reports in future periods.

The components of the Company's accumulated other comprehensive income (loss) consisted of the following as of December 31 (in thousands):

| | 2009 | 2008 |
|--|--------------------|---------------------|
| Foreign currency translation loss, net of tax of \$1,485 and \$0 | \$ (92,594) | \$ (146,219) |
| Unrealized loss on interest rate swaps, net of tax of \$3,469 and \$4,660 | (4,933) | (6,350) |
| Unrealized gain (loss) on available for sale securities, net of tax of \$203 and \$169 | 289 | (231) |
| | <u>\$ (97,238)</u> | <u>\$ (152,800)</u> |

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For further information on derivatives and hedging instruments, see Note 6 below.

Earnings Per Share

The Company computes earnings per share in accordance with the accounting standard related to earnings per share (“EPS”). Basic earnings per share is computed using net income (loss) and the weighted-average number of common shares outstanding. Diluted earnings per share is computed using net income, adjusted for interest expense as a result of the assumed conversion of the Company’s Convertible Subordinated Debentures, 2.50% Convertible Subordinated Notes, 3.00% Convertible Subordinated Notes and 4.75% Convertible Subordinated Notes, if dilutive, and the weighted-average number of common shares outstanding plus any dilutive potential common shares outstanding. Dilutive potential common shares include the assumed exercise, vesting and issuance activity of employee equity awards using the treasury stock method, as well as warrants and shares issuable upon the conversion of the Convertible Subordinated Debentures, 2.50% Convertible Subordinated Notes, 3.00% Convertible Subordinated Notes and 4.75% Convertible Subordinated Notes.

The following table sets forth the computation of basic and diluted earnings per share for the years ended December 31 (in thousands, except per share amounts):

| | 2009 | 2008 | 2007 |
|---|------------------|-------------------|-------------------|
| Numerator: | | | |
| Numerator for basic earnings per share | \$ 69,431 | \$ 107,924 | \$ (9,891) |
| Effect of assumed conversion of convertible subordinated debentures and notes: | | | |
| Interest expense, net of tax | 23 | 8,059 | — |
| Numerator for diluted earnings per share | <u>\$ 69,454</u> | <u>\$ 115,983</u> | <u>\$ (9,891)</u> |
| Denominator: | | | |
| Denominator for basic earnings per share | 38,488 | 37,120 | 32,595 |
| Effect of dilutive securities: | | | |
| Convertible subordinated debentures | 211 | 772 | — |
| 3.00% convertible subordinated notes | — | 2,945 | — |
| Employee equity awards | 977 | 745 | — |
| Total dilutive potential shares | 1,188 | 4,462 | — |
| Denominator for diluted earnings per share | <u>39,676</u> | <u>41,582</u> | <u>—</u> |
| Earnings per share: | | | |
| Basic | <u>\$ 1.80</u> | <u>\$ 2.91</u> | <u>\$ (0.30)</u> |
| Diluted | <u>\$ 1.75</u> | <u>\$ 2.79</u> | <u>\$ (0.30)</u> |

The following table sets forth 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 December 31 (in thousands):

| | 2009 | 2008 | 2007 |
|--|---------------|--------------|--------------|
| Shares reserved for conversion of convertible subordinated debentures | — | — | 816 |
| Shares reserved for conversion of convertible 2.50% convertible subordinated notes | 2,232 | 2,232 | 2,232 |
| Shares reserved for conversion of convertible 3.00% convertible subordinated notes | 2,945 | — | 2,945 |
| Shares reserved for conversion of convertible 4.75% convertible subordinated notes | 4,433 | — | — |
| Common stock warrants | 1 | 1 | 1 |
| Common stock related to employee equity awards | 1,045 | 1,835 | 3,678 |
| | <u>10,656</u> | <u>4,068</u> | <u>9,672</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Recent Accounting Pronouncements

In May 2009, the FASB issued an accounting standard update, which establishes the accounting for and disclosures of subsequent events. The Company adopted this accounting standard update during the three months ended June 30, 2009. The adoption of this accounting standard update did not have material impact on the Company's consolidated financial statements.

In June 2009, the FASB issued Accounting Standards Update No. 2009-01 ("ASU 2009-01"), which establishes the FASB Accounting Standards Codification™ as the source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. The Company adopted ASU 2009-01 during the three months ended September 30, 2009 and its adoption did not have any significant impact on the Company's consolidated financial statements.

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 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. ASU 2010-06 is effective for the Company during the three months ended March 31, 2010. The Company is currently evaluating the impact that the adoption of this standard will have on its consolidated financial statements, if any.

2. Acquisitions

Upminster Acquisition

On July 22, 2009, a wholly-owned subsidiary of the Company acquired all of the issued and outstanding share capital of Upminster GmbH, a company which owned a data center and the real estate on which it is situated in Frankfurt, Germany, for a cash payment of \$28,208,000, excluding acquisition costs (the "Upminster Acquisition"). The combined company operates under the Equinix name. The Upminster Acquisition was accounted for using the acquisition method. The results of operations for Upminster are not significant to the Company; therefore, the Company does not present its purchase price allocation or pro forma combined results of operations.

Virtu Acquisition

On February 5, 2008, a wholly-owned subsidiary of the Company acquired all of the issued and outstanding share capital of Virtu, a provider of network-neutral data center services in the Netherlands, for a cash payment of \$23,345,000, including closing costs (the "Virtu Acquisition"). Under the terms of the Virtu Acquisition, the Company may also pay additional future contingent consideration, which will be payable in the form of up to 20,000 shares of the Company's common stock and cash of up to 1,500,000 Euros, contingent upon meeting certain pre-determined future annual operating targets from 2008 to 2011 (the 2008 and 2009 targets were not met and, therefore, no accrual was recognized). Such contingent consideration, if paid, will be recorded as additional goodwill. Virtu, a similar business to that of the Company, operated data centers in the Netherlands, and supplements the Company's existing European operations. The combined company predominantly operates under the Equinix name. The results of operations for Virtu are not significant to the Company; therefore, the Company does not present its purchase price allocation or pro forma combined results of operations.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

IXEurope Acquisition

On September 14, 2007, a wholly-owned subsidiary of the Company purchased the entire issued and to be issued share capital of IXEurope plc (“IXEurope”), a publicly-held company headquartered in London, U.K. (the “IXEurope Acquisition”). Under the final terms of the IXEurope Acquisition, IXEurope shareholders received 140 British pence in cash for each IXEurope share. The purchase price, including direct transaction costs, totaled 271,113,000 British pounds or \$549,217,000. IXEurope, a similar business to that of the Company, operated data centers in the United Kingdom, France, Germany and Switzerland and provided the Company with an immediate entry into the European data center market, supplementing the Company’s existing U.S. and Asia-Pacific operations. This is the primary reason the Company paid significantly more than the carrying amount of IXEurope’s net book value, resulting in a significant amount of goodwill and intangible assets being recorded by the Company.

Fully-diluted shares of IXEurope held by IXEurope’s two top officers, representing 1,974,000 British pounds of the total purchase price, were not exchanged for cash upon closing. Instead, equity awards of the Company’s common stock with a fair value of \$4,007,000 were issued to the two top officers of IXEurope and were subject to vesting based on continuous employment through the end of 2008, as well as certain financial performance criteria of the Europe operations (the “IXEurope Equity Compensation”). The IXEurope Equity Compensation was not accounted for as part of the purchase price of IXEurope. Rather, the IXEurope Equity Compensation was expensed into the operations of the Company over the vesting life of such awards. During the second quarter of 2008, the Company entered into agreements with these officers in connection with their resignations and modified these equity awards to accelerate vesting. As a result, the Company recorded an incremental charge of \$2,256,000 during the year ended December 31, 2008, which is included in general and administrative expenses in the Company’s accompanying consolidated statements of operations.

Purchase Price Allocation

Under the purchase method of accounting, the total purchase price was allocated to IXEurope’s net tangible and intangible assets based upon their fair value as of the date of acquisition. Based upon the purchase price and the valuation of IXEurope, the purchase price allocation was as follows (in thousands):

| | |
|---------------------------------------|------------------|
| Cash and cash equivalents | \$ 7,425 |
| Accounts receivable | 15,322 |
| Other current assets | 16,611 |
| Property, plant and equipment | 172,444 |
| Goodwill | 428,605 |
| Intangible asset—customer contracts | 65,831 |
| Intangible asset—leases | 4,319 |
| Other assets | 11,588 |
| Total assets acquired | 722,145 |
| Accounts payable and accrued expenses | (44,528) |
| Accrued property, plant and equipment | (13,192) |
| Current portion of capital leases | (1,430) |
| Current portion of loan payable | (826) |
| Other current liabilities | (8,333) |
| Capital leases, less current portion | (3,504) |
| Loan payable | (65,196) |
| Deferred tax liability | (22,123) |
| Unfavorable lease obligations | (6,525) |
| Other liabilities | (7,271) |
| Net assets acquired | <u>\$549,217</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

A total of \$65,831,000 has been allocated to customer contracts, an intangible asset with an estimated useful life of 11 years. A total of \$4,319,000 has been allocated to favorable lease obligations, an intangible asset with an estimated life of 15.8 years. A total of \$6,525,000 has been allocated to unfavorable lease obligations, a liability with an estimated life of 11.7 years.

A total of \$428,605,000 has been allocated to goodwill. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. In accordance with the accounting standard related to goodwill and other intangible assets, goodwill is not amortized, is tested for impairment at least annually. Goodwill is not deductible for federal tax purposes under U.S. income tax laws.

Unaudited Pro forma Consolidated Combined Results

The consolidated financial statements of the Company include the operations of IXEurope from September 14, 2007 to December 31, 2007 and reflect the net assets acquired. The following unaudited pro forma combined financial information has been prepared to give effect to the IXEurope Acquisition by the Company using the purchase method of accounting and the related financings, the Common Stock Offering and the sale of 3.00% Convertible Subordinated Notes, to fund this acquisition. The unaudited pro forma combined financial information presents the consolidated results of the Company as if the IXEurope Acquisition and the related financings had been completed as of the beginning of each period presented. This pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the results of operations that would have actually been reported had the IXEurope Acquisition and the related financings occurred as of January 1, 2007, nor is it necessarily indicative of the future results of operations of the combined company.

The following table sets forth the unaudited pro forma consolidated combined result of operations for the year ended December 31, 2007 (in thousands, except per share data):

| | |
|--------------------------------------|-----------|
| Revenues | \$497,397 |
| Net loss | (21,568) |
| Basic and diluted earnings per share | (0.67) |

3. IBX Acquisitions and Expansions

Although the Company owns certain of its IBX data centers through property acquisitions, the Company leases a majority of its IBX data centers under non-cancellable operating lease agreements. For further information on the Company's operating lease commitments, see "Operating Lease Commitments" in Note 14 below. For those IBX acquisition and expansion projects not subject to operating lease arrangements, the Company presents the following information for the years ended December 31, 2009 and 2008:

Zurich IBX Expansion Project

In June 2009, an indirect wholly-owned subsidiary of the Company entered into a lease for building space within a multi-floor, multi-tenant building that the Company will convert into its fourth IBX data center in Zurich, Switzerland (the "Zurich Lease" and the "Zurich IBX Expansion Project"). The Zurich Lease has a fixed term of 10 years, with options to extend for up to an additional 10 years, in five-year increments. Cumulative minimum payments under the Zurich Lease total approximately \$8,729,000 (using the exchange rate as of December 31, 2009) over the Zurich Lease term, which does not include any rent obligation for the extension periods. Pursuant to the accounting standards for lessee's involvement in asset construction and for leasing transactions involving special-purpose entities, the Company is considered the owner of the leased building space

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

during the construction phase due to some specific provisions contained in the Zurich Lease. As a result, during the year ended December 31, 2009, the Company recorded a building asset and a related financing liability (the “Zurich IBX Building Financing”) totaling approximately \$11,470,000 (using the exchange rate as of December 31, 2009).

London IBX Expansion Project

In October 2008, an indirect wholly-owned subsidiary of the Company entered into an agreement for lease for property and a warehouse building to be constructed for the Company in the London, England metro area (the “Agreement for Lease”). The Agreement for Lease provides for the completion of a warehouse building within a specified time and the entry into a definitive lease (the “Lease”) upon its completion. The Lease will have a term of 20 years, with the Company’s option to terminate after 15 years upon six months’ prior notice, and a total cumulative rent obligation of approximately \$40,259,000 (using the exchange rate as of December 31, 2009) over the first 15 years of the Lease. On the fifteenth anniversary of the Lease, the rent can be reviewed and adjusted to market rents, as set out in the Lease. The Company expects to enter into the Lease in approximately February 2010. In January 2009, the landlord commenced construction of the building that the Company will ultimately lease. Pursuant to the accounting standards for lessee’s involvement in asset construction and for leasing transactions involving special-purpose entities, the Company is considered the owner of the building during the construction phase. As a result, the Company will be recording a building asset during the construction period and a related financing liability (the “London IBX Building Financing”), while the underlying land will be considered an operating lease. The building is expected to be completed in February 2010. In connection with the London IBX Building Financing, the Company recorded a building asset and a corresponding financing obligation liability totaling approximately \$14,003,000 (using the exchange rate as of December 31, 2009), representing the estimated percentage-of-completion of the building as of December 31, 2009.

Paris IBX Expansion Project

In September 2008, the Company entered into a capital lease for a space within a warehouse building in the Paris, France metro area adjacent to one of its existing Paris IBX data centers, which will become the Company’s third IBX data center in the Paris metro area (the “Paris IBX Expansion Project”). The Company took possession of this property in the fourth quarter of 2008, and as a result, recorded a property, plant and equipment asset, as well as a capital lease obligation, totaling 28,137,000 Euros or approximately \$39,311,000 (the “Paris IBX Capital Lease”). Monthly payments under the Paris IBX Capital Lease, which commence in April 2009, will be made through September 2020 at an effective interest rate of 7.43% per annum (see Note 9).

Sydney IBX Expansion Project

In January 2008, the Company entered into a long-term lease for a new building located adjacent to its existing Sydney IBX data center and at the same time terminated the existing lease for the Company’s original Sydney IBX data center by incorporating it into the new lease. The Company extended the original lease term for an additional seven years in a single, revised lease agreement for both buildings (collectively, the “Building”). Cumulative minimum payments under this lease total 18,260,000 Australian dollars, or approximately \$14,500,000, of which 12,202,000 Australian dollars, or approximately \$9,700,000, is incremental to the previous lease. Payments are due monthly and commenced in January 2008. As a result of the Company significantly altering the Building’s footprint in order to meet the Company’s IBX data center needs, the Company followed the accounting standard for the effect of lessee involvement in asset construction. Pursuant to this standard, the Building is considered a financed asset (the “Sydney IBX Building Financing”) and subject to a ground lease for the underlying land, which is considered an operating lease. Pursuant to the Sydney IBX Building Financing, the Company recorded the Building asset and a corresponding financing obligation liability totaling 5,805,000 Australian dollars (or approximately \$4,600,000) in January 2008. Monthly payments under

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

the Sydney IBX Building Financing, which commenced in January 2008, are payable through December 2022, at an effective interest rate of approximately 7.90% per annum.

4. Gains on Asset Sales

EMS Sale

In December 2007, the Company sold its Equinix mail service (“EMS”) offering located in Singapore for cash gross proceeds of \$1,657,000 (the “EMS Sale”) in a related party transaction (see Note 14) resulting in a gain of \$1,338,000. EMS was a service offering unique to Singapore and was acquired by the Company in its acquisition of i-STT Pte Ltd on December 31, 2002; however, it was not considered a core service offering for the Company and the sale enables the Company to focus on its core IBX service offerings in Singapore.

5. 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 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 |
| Money markets and cash | 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 | <u>\$ 9,515</u> | <u>\$ 292</u> | <u>\$ (4)</u> | <u>\$ 9,803</u> |
| | | | | |
| | December 31, 2008 | | | |
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| U.S. government and agency obligations | \$ 130,672 | \$ 344 | \$ (14) | \$ 131,002 |
| Money markets and cash | 112,208 | — | — | 112,208 |
| Reserve (see below) | 9,250 | — | — | 9,250 |
| Corporate bonds | 35,046 | 35 | (546) | 34,535 |
| Asset-backed securities | 17,970 | 53 | (299) | 17,724 |
| Certificates of deposits | 2,000 | 5 | — | 2,005 |
| Other securities | 1,199 | 22 | — | 1,221 |
| Total available-for-sale securities | 308,345 | 459 | (859) | 307,945 |
| Less amounts classified as cash and cash equivalents | (220,207) | — | — | (220,207) |
| Total securities classified as investments | 88,138 | 459 | (859) | 87,738 |
| Less amounts classified as short-term investments | (42,132) | (135) | 155 | (42,112) |
| Total long-term investments | <u>\$ 46,006</u> | <u>\$ 324</u> | <u>\$ (704)</u> | <u>\$ 45,626</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As of December 31, 2009 and 2008, 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 December 31, 2009 and 2008. The maturities of securities classified as long-term investments were greater than one year and less than three years as of December 31, 2009 and 2008.

During the year ended December 31, 2008, the Company recorded a \$1,527,000 other-than-temporary impairment loss, which is included in the Company's accompanying consolidated statements of operations, resulting from its investments 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 year ended December 31, 2008, the Company issued a redemption notice to redeem in full all of its holdings with the Reserve and received distributions totaling \$40,163,000. As of December 31, 2008, the funds held by the Reserve with a fair value totaling \$9,250,000 remained outstanding. During the year ended December 31, 2009, the Company recorded an additional \$2,590,000 of other-than-temporary impairment loss in connection with its investments in the Reserve, which is included in the Company's accompanying consolidated statements of operations. During the year ended December 31, 2009, the Company had received outstanding funds held by the Reserve and as of December 31, 2009, the Company had no amounts remaining outstanding on its consolidated balance sheet for the Reserve. However, if the Company receives any further distributions from the Reserve, the Company will record recoveries of other-than-temporary impairment loss in its consolidated statement of operations in the period in which any proceeds are received. In January 2010, the Company received an additional distribution of \$3,420,000 from the Reserve (see Note 18).

Effective April 1, 2009, the Company adopted an accounting standard update for the recognition and disclosure of other-than-temporary impairments of investments. As a result of this adoption, the Company reclassified previously-recorded other-than-temporary impairment loss in connection with its investment in the Reserve from interest income to other-than-temporary impairment loss on investments in the Company's accompanying consolidated statements of operations. The other-than-temporary impairment losses that the Company recorded during the years ended December 31, 2008 and 2009 as described above were entirely credit losses with nothing required to be reclassified from earnings to accumulated other comprehensive income (loss) for non-credit portions in either period.

As of December 31, 2009, 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 gain (losses) |
|---------------------------|---------------------|----------------------|---------------------------------|
| Cash and cash equivalents | \$ — | \$ (3) | \$ (3) |
| Short-term investments | 208 | — | 208 |
| Long-term investments | 292 | (4) | 288 |
| | <u>\$ 500</u> | <u>\$ (7)</u> | <u>\$ 493</u> |

None of the securities held at December 31, 2009 were other-than-temporarily impaired.

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 December 31, 2009.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes the fair value and gross unrealized losses related to six available-for-sale securities with an aggregate cost basis of \$189,644,000, aggregated by type of investment and length of time that individual securities have been in continuous unrealized loss position, at December 31, 2009 (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 | \$ 188,999 | \$ (3) | \$ — | \$ — |
| Asset-backed securities | — | — | 638 | (4) |
| | <u>\$ 188,999</u> | <u>\$ (3)</u> | <u>\$ 638</u> | <u>\$ (4)</u> |

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 December 31, 2009, 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 in interest income, net 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 capital expenditure requirements. As a result, the Company expects to recognize lower interest income in future periods.

As of December 31, 2008, 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 losses |
|------------------------|---------------------|----------------------|--------------------------|
| Short-term investments | \$ 135 | \$ (155) | \$ (20) |
| Long-term investments | 324 | (704) | (380) |
| | <u>\$ 459</u> | <u>\$ (859)</u> | <u>\$ (400)</u> |

The following table summarizes the fair value and gross unrealized losses related to 63 available-for-sale securities with an aggregate cost basis of \$87,136,000, aggregated by type of investment and length of time that individual securities have been in continuous unrealized loss position, as of December 31, 2008 (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 | \$ 43,925 | \$ (12) | \$ — | \$ — |
| Corporate bonds | 27,537 | (548) | — | — |
| Asset-backed securities | 14,816 | (299) | — | — |
| | <u>\$ 86,278</u> | <u>\$ (859)</u> | <u>\$ —</u> | <u>\$ —</u> |

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accounts Receivable

Accounts receivable, net, consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|---------------------------------|------------------|------------------|
| Accounts receivable | \$126,122 | \$119,030 |
| Unearned revenue | (59,635) | (50,964) |
| Allowance for doubtful accounts | (1,720) | (2,037) |
| | <u>\$ 64,767</u> | <u>\$ 66,029</u> |

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.

Additions (reductions) to the allowance for doubtful accounts were approximately (\$15,000), \$1,582,000 and \$94,000 for the years ended December 31, 2009, 2008 and 2007, respectively. Charges (recoveries) against the allowance were approximately \$302,000, (\$9,000) and (\$79,000), respectively, for the years ended December 31, 2009, 2008 and 2007.

Other Current Assets

Other current assets consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|--|------------------|------------------|
| Prepaid expenses | \$ 10,277 | \$ 9,550 |
| Taxes receivable | 7,081 | 3,434 |
| Foreign currency forward contract receivable | 498 | 377 |
| Other receivables | 2,083 | 1,280 |
| Other current assets | 1,795 | 586 |
| | <u>\$ 21,734</u> | <u>\$ 15,227</u> |

Property, Plant and Equipment

Property, plant and equipment consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|---------------------------------|--------------------|--------------------|
| IBX plant and machinery | \$ 925,360 | \$ 651,820 |
| Leasehold improvements | 552,548 | 472,872 |
| Buildings | 277,247 | 196,009 |
| Site improvements | 231,437 | 217,200 |
| IBX equipment | 175,030 | 147,832 |
| Computer equipment and software | 85,472 | 74,179 |
| Land | 84,681 | 48,950 |
| Furniture and fixtures | 11,428 | 9,866 |
| Construction in progress | 243,129 | 277,208 |
| | <u>2,586,332</u> | <u>2,095,936</u> |
| Less accumulated depreciation | (778,217) | (603,106) |
| | <u>\$1,808,115</u> | <u>\$1,492,830</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Leasehold improvements, IBX plant and machinery, computer equipment and software and buildings recorded under capital leases aggregated \$87,138,000 and \$80,239,000 at December 31, 2009 and 2008, respectively. Amortization on the assets recorded under capital leases is included in depreciation expense and accumulated depreciation on such assets totaled \$22,381,000 and \$11,734,000 as of December 31, 2009 and 2008, respectively.

As of December 31, 2009 and 2008, the Company had accrued property, plant and equipment expenditures of \$109,876,000 and \$89,518,000, respectively. The Company's planned capital expenditures during 2010 in connection with recently acquired IBX properties and expansion efforts are substantial. For further information, refer to "Other Purchase Commitments" in Note 14.

Goodwill and Other Intangibles

Goodwill and other intangible assets, net, consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|-------------------------------------|-------------------|-------------------|
| Goodwill: | | |
| Europe | \$ 362,569 | \$ 324,674 |
| Asia-Pacific | 18,481 | 18,155 |
| | <u>381,050</u> | <u>342,829</u> |
| Other intangibles: | | |
| Intangible asset—customer contracts | 63,957 | 58,605 |
| Intangible asset—leases | 4,690 | 4,349 |
| Intangible asset—others | 1,630 | 755 |
| | <u>70,277</u> | <u>63,709</u> |
| Accumulated amortization | <u>(19,262)</u> | <u>(12,791)</u> |
| | <u>51,015</u> | <u>50,918</u> |
| | <u>\$ 432,065</u> | <u>\$ 393,747</u> |

Changes in the carrying amount of goodwill by geographic regions are as follows (in thousands):

| | <u>Europe</u> | <u>Asia-Pacific</u> | <u>Total</u> |
|-------------------------------------|-------------------|---------------------|-------------------|
| Balance at December 31, 2007 | \$ 424,916 | \$ 18,010 | \$ 442,926 |
| Virtu acquisition | 18,263 | — | 18,263 |
| Impact of foreign currency exchange | <u>(118,505)</u> | <u>145</u> | <u>(118,360)</u> |
| Balance at December 31, 2008 | 324,674 | 18,155 | 342,829 |
| Upminster acquisition | 4,232 | — | 4,232 |
| Impact of foreign currency exchange | <u>33,663</u> | <u>326</u> | <u>33,989</u> |
| Balance at December 31, 2009 | <u>\$ 362,569</u> | <u>\$ 18,481</u> | <u>\$ 381,050</u> |

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.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For the years ended December 31, 2009, 2008 and 2007, the Company recorded amortization expense of \$5,555,000, \$6,868,000 and \$2,452,000, respectively, associated with its other intangible assets. Estimated future amortization expense related to these intangibles is as follows (in thousands):

| Year ending: | |
|---------------------|------------------|
| 2010 | \$ 5,808 |
| 2011 | 5,714 |
| 2012 | 5,697 |
| 2013 | 5,697 |
| 2014 | 5,697 |
| 2015 and thereafter | 22,402 |
| Total | <u>\$ 51,015</u> |

Other Assets

Other assets consisted of the following as of December 31 (in thousands):

| | 2009 | 2008 |
|--------------------------|------------------|------------------|
| Deposits | \$ 28,032 | \$ 21,485 |
| Debt issuance costs, net | 19,762 | 16,216 |
| Prepaid expenses | 3,247 | 3,874 |
| Restricted cash | 3,021 | 14,934 |
| Other assets | 1,047 | 1,285 |
| | <u>\$ 55,109</u> | <u>\$ 57,794</u> |

Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consisted of the following as of December 31 (in thousands):

| | 2009 | 2008 |
|-----------------------------------|------------------|------------------|
| Accounts payable | \$ 14,874 | \$ 18,325 |
| Accrued compensation and benefits | 35,809 | 22,135 |
| Accrued taxes | 14,508 | 8,640 |
| Accrued utilities and security | 13,526 | 10,327 |
| Accrued interest | 6,235 | 5,962 |
| Accrued professional fees | 4,657 | 2,741 |
| Accrued other | 9,444 | 6,187 |
| | <u>\$ 99,053</u> | <u>\$ 74,317</u> |

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Other Current Liabilities

Other current liabilities consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|---|------------------|------------------|
| Deferred installation revenue | \$ 26,319 | \$ 22,769 |
| Customer deposits | 8,406 | 5,913 |
| Deferred recurring revenue | 2,689 | 4,434 |
| Accrued restructuring charges | 2,043 | 6,023 |
| Deferred tax liabilities | 814 | 7,342 |
| Foreign currency forward contract payable | — | 2,072 |
| Deferred rent | 403 | 495 |
| Interest rate swap payable | — | 271 |
| Other current liabilities | <u>492</u> | <u>1,136</u> |
| | <u>\$ 41,166</u> | <u>\$ 50,455</u> |

Other Liabilities

Other liabilities consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|--|-------------------|-------------------|
| Deferred rent, non-current | \$ 34,288 | \$ 28,146 |
| Deferred tax liabilities, non-current | 25,937 | 16,531 |
| Deferred installation revenue, non-current | 18,228 | 12,083 |
| Asset retirement obligations | 17,710 | 12,264 |
| Interest rate swap payable, non-current | 8,496 | 10,631 |
| Customer deposits, non-current | 5,813 | 6,108 |
| Deferred recurring revenue, non-current | 5,160 | 6,180 |
| Accrued restructuring charges, non-current | 3,876 | 7,288 |
| Other liabilities | <u>1,095</u> | <u>864</u> |
| | <u>\$ 120,603</u> | <u>\$ 100,095</u> |

The Company currently leases the majority of its IBX data centers and certain equipment under non-cancelable operating lease agreements expiring through 2027 (see “Other Purchase Commitments” in Note 14). 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.

6. Derivative and Hedging Instruments

The Company follows the accounting standard for derivatives and hedging in its accounting for derivatives and hedging activities. The Company employs interest rate swaps to partially offset its exposure to variability in interest payments due to fluctuations in interest rates for certain of its variable-rate debt. To assess effectiveness, the Company uses a regression analysis. The extent to which a hedging instrument has been and is expected to continue to be effective at achieving offsetting changes in cash flows is assessed and documented at least quarterly. Any ineffectiveness is reported in current-period earnings. If it is determined that a derivative is not highly effective at hedging the designated exposure, hedge accounting is discontinued. For qualifying cash flow

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

hedges, the effective portion of the change in the fair value of the derivative is recorded in other comprehensive income (loss) and recognized in the consolidated statements of operations when the hedged cash flows affect earnings. The ineffective portions of cash flow hedges are immediately recognized in earnings. If the hedge relationship is terminated, then the change in fair value of the derivative recorded in other comprehensive income (loss) is recognized in earnings when the cash flows that were hedged occur, consistent with the original hedge strategy. For hedge relationships discontinued because the forecasted transaction is not expected to occur according to the original strategy, any related derivative amounts recorded in other comprehensive income (loss) are immediately recognized in earnings. The Company has no fair value hedges. The Company does not use derivatives for speculative or trading purposes. The Company employs foreign currency forward contracts to partially offset its business exposure to foreign exchange risk for certain existing foreign currency-denominated assets and liabilities.

Cash Flow Hedges—Interest Rate Swaps

The Company has variable-rate debt financing. 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 that are caused by interest rate volatility. 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.

In May 2008, the Company entered into several interest rate swaps in order to minimize variability related to its variable-rate Chicago IBX Financing and European Financing (see Note 9). The Company's two existing interest rate swaps acquired in the IXEurope Acquisition expired in August 2009.

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

| | <u>Notional Amount</u> | <u>Fair Value⁽¹⁾</u> | <u>Accumulated Loss⁽²⁾</u> |
|--|----------------------------|-------------------------------------|---|
| Liabilities: | | | |
| European Financing interest rate swaps | \$ 89,065 | \$(5,117) | \$ (5,023) |
| Chicago IBX Financing interest rate swap | <u>105,000</u> | <u>(3,379)</u> | <u>(3,379)</u> |
| | <u>\$194,065</u> | <u>\$(8,496)</u> | <u>\$ (8,402)</u> |

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

As of December 31, 2008, 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):

| | <u>Notional Amount</u> | <u>Fair Value⁽¹⁾</u> | <u>Accumulated Loss⁽²⁾</u> |
|--|----------------------------|-------------------------------------|---|
| Liabilities: | | | |
| European Financing interest rate swaps | \$101,018 | \$ (5,930) | \$ (6,038) |
| Chicago IBX Financing interest rate swap | <u>105,000</u> | <u>(4,972)</u> | <u>(4,972)</u> |
| | <u>\$206,018</u> | <u>\$(10,902)</u> | <u>\$ (11,010)</u> |

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

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company designated all existing interest rate swaps as highly effective hedge relationships at achieving offsetting changes in cash flows as of December 31, 2009 and 2008 with an insignificant amount of ineffectiveness recorded in interest expense on the accompanying consolidated statements of operations.

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 years ended December 31, 2009 and 2008. As of December 31, 2009, the Company had gross assets totaling \$504,000 and gross liabilities totaling \$6,000 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 year ended December 31, 2009, the Company recognized a net gain of \$365,000 in connection with its foreign currency forward contracts, which is reflected in other income (expense) on the accompanying consolidated statement of operations. As of December 31, 2008, the Company had gross assets totaling \$447,000 and gross liabilities totaling \$2,142,000 representing the fair values of these foreign currency forward contracts. During the year ended December 31, 2008, the Company recognized a net gain of \$7,835,000 in connection with its foreign currency forward contracts, which is reflected in other income (expense) on the accompanying consolidated statement of operations. During the year ended December 31, 2007, the Company entered into foreign currency forward contracts to purchase 265,156,000 British pounds at an average forward rate of 2.020007, or the equivalent of \$535,617,000, for purposes of hedging a portion of the purchase price of the IXEurope Acquisition. Upon cash payment, the Company recorded a foreign exchange gain of \$1,494,000 during the year ended December 31, 2007, which is reflected within other income (expense) on the Company's accompanying consolidated statements of operations.

7. Fair Value Measurements

The Company follows the accounting standard for fair value measurements, which establishes a fair value hierarchy to prioritize the inputs used in valuation techniques to increase consistency and comparability in fair value measurements. There are three levels to the fair value hierarchy of inputs to fair value (Level 1 being the highest priority and Level 3 being the lowest priority) as follows:

- Level 1: Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2: Inputs reflect quoted prices for identical assets or liabilities in markets that are not active; quoted prices for similar assets or liabilities in active markets; inputs other than quoted prices that are observable for the asset or the liability; or inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3: Unobservable inputs reflecting the Company's own assumptions incorporated in valuation techniques used to determine fair value. These assumptions are required to be consistent with market participant assumptions that are reasonably available.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company measures and reports certain financial assets and liabilities at fair value on a recurring basis, including its investments in money market funds and available-for-sale debt investments in other public companies, governmental units and other agencies and derivatives.

In January 2009, the Company adopted the accounting standard for the measurement of fair value for nonfinancial assets and liabilities that are measured at fair value on a nonrecurring basis. These include:

- Nonfinancial assets and nonfinancial liabilities initially measured at fair value in a business combination or other new basis event, but not measured at fair value in subsequent reporting periods;
- Reporting units and nonfinancial assets and nonfinancial liabilities measured at fair value for goodwill impairment test;
- Indefinite-lived intangible assets measured at fair value for impairment assessment;
- Nonfinancial long-lived assets or asset groups measured at fair value for impairment assessment or disposal;
- Asset retirement obligations initially measured at fair value but not subsequently measured at fair value; and
- Nonfinancial liabilities associated with exit or disposal activities initially measured at fair value but not subsequently measured at fair value.

During the year ended December 31, 2009, the Company did not have any nonfinancial assets or liabilities measured at fair value on a recurring basis.

During the year ended December 31, 2009, there were no impairment charges recorded in connection with the Company's goodwill and long-lived assets. The Company performs impairment tests of 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 was tested for impairment in the third quarter of 2009 and goodwill attributed to the Company's Asia-Pacific reporting unit was tested in the fourth quarter of 2009 (see Note 1). 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 year ended December 31, 2009, the Company recorded new asset retirement obligations and recorded a reduction to its restructuring charge, which include measurements of fair value on a non-recurring basis; however, the amounts for both of these items were not significant.

In April 2009, the Company adopted an accounting standard update for determining fair value when the volume and level of activity for an asset or liability have significantly decreased and identifying transactions that are not orderly. This adoption did not have any significant impact on the Company's consolidated financial statements.

In September 2009, the Company adopted Accounting Standard Update No. 2009-05 ("ASU 2009-05"), which clarifies how to measure the fair value of liabilities in circumstances when a quoted price in an active market for the identical liability is not available. This adoption did not have any significant impact on the Company's consolidated financial statements.

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EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's financial assets and liabilities measured at fair value on a recurring basis at December 31, 2009 were as follows (in thousands):

| | Fair value at December 31, 2009 | Fair value measurement using | | |
|--|---------------------------------------|------------------------------|-------------------|-------------|
| | | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| U.S. government and agency obligations | \$ 437,923 | \$ — | \$ 437,923 | \$ — |
| Money markets and cash | 147,059 | 147,059 | — | — |
| Corporate bonds | 12,603 | — | 12,603 | — |
| Asset-backed securities | 5,543 | — | 5,543 | — |
| Other securities | 1,109 | — | 1,109 | — |
| Derivative assets ⁽¹⁾ | 498 | — | 498 | — |
| | <u>\$ 604,735</u> | <u>\$ 147,059</u> | <u>\$ 457,676</u> | <u>\$ —</u> |
| Liabilities: | | | | |
| Derivative liabilities ⁽²⁾ | (8,496) | — | (8,496) | — |
| | <u>\$ (8,496)</u> | <u>\$ —</u> | <u>\$ (8,496)</u> | <u>\$ —</u> |

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

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

The Company's financial assets and liabilities measured at fair value on a recurring basis at December 31, 2008 were as follows (in thousands):

| | Fair value at December 31, 2008 | Fair value measurement using | | |
|--|---------------------------------------|------------------------------|--------------------|-----------------|
| | | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| U.S. government and agency obligations | \$ 131,002 | \$ — | \$ 131,002 | \$ — |
| Money markets and cash | 112,208 | 112,208 | — | — |
| Reserve fund | 9,250 | — | — | 9,250 |
| Corporate bonds | 34,535 | — | 34,535 | — |
| Asset-backed securities | 17,724 | — | 17,724 | — |
| Certificates of deposits | 2,005 | — | 2,005 | — |
| Other securities | 1,221 | — | 1,221 | — |
| Derivative assets ⁽¹⁾ | 377 | — | 377 | — |
| | <u>\$ 308,322</u> | <u>\$ 112,208</u> | <u>\$ 186,864</u> | <u>\$ 9,250</u> |
| Liabilities: | | | | |
| Derivative liabilities ⁽²⁾ | (12,974) | — | (12,974) | — |
| | <u>\$ (12,974)</u> | <u>\$ —</u> | <u>\$ (12,974)</u> | <u>\$ —</u> |

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

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

The fair value of the Company's investments in available-for-sale money market funds approximates their face value. Such instruments are included in cash equivalents. These instruments include available-for-sale debt investments related to the Company's investments in the securities of other public companies, governmental

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

units and other agencies. The fair value of these investments is based on the quoted market price of the underlying shares. However, the Company recorded an other-than-temporary impairment loss of \$1,527,000 during the year ended December 31, 2008 on funds held by the Reserve money market fund, whose carrying value of \$50,940,000 was in excess of fair value of \$49,422,000, of which \$9,250,000 remained outstanding at December 31, 2008. The Company recorded an additional \$2,590,000 of other-than-temporary impairment loss on these funds during the year ended December 31, 2009. The money market funds held in the Reserve, originally classified within Level 1 of the fair value hierarchy, were reclassified to Level 3 of the fair value hierarchy in September 2008. The other-than-temporary impairment losses of \$1,527,000 and \$2,590,000, respectively, for the years ended December 31, 2008 and 2009 is reflected in other-than-temporary impairment loss on investments on the accompanying consolidated statements of operations.

The following table provides a summary of the activities of the Company's Level 3 financial assets measured at fair value for the two year ended December 31, 2009 (in thousands):

| | |
|------------------------------------|----------|
| Balance at December 31, 2007 | \$ — |
| Transfers from Level 1 | 50,940 |
| Net realized losses ⁽¹⁾ | (1,527) |
| Settlements | (40,163) |
| Balance at December 31, 2008 | \$ 9,250 |
| Net realized losses ⁽¹⁾ | (2,590) |
| Settlements | (6,660) |
| Balance at December 31, 2009 | \$ — |

(1) Included in the consolidated statements of operations within other-than-temporary impairment loss on investments.

Valuation Methods

Fair value estimates are made as of a specific point in time based on estimates using present value or other valuation techniques. These techniques involve uncertainties and are affected by the assumptions used and the judgments made regarding risk characteristics of various financial instruments, discount rates, estimates of future cash flows, future expected loss experience and other factors.

The Company's money market funds are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices for identical instruments in active markets. However, the Reserve experienced a decline in its fair value as a result of its exposure to investments held in Lehman Brothers which filed for Chapter 11 bankruptcy protection in September 2008. The Company recorded a loss on its investments in the Reserve and each of the individual securities which comprise the holdings in the Reserve was further evaluated. During the year ended December 31, 2008, the Company re-designated its investment in the Reserve from cash and cash equivalents to short-term investments. This re-designation was included in purchases of investments in investing activities in the Company's accompanying consolidated statements of cash flows. The Company conducted its fair value assessment of the Reserve using Level 2 and Level 3 inputs. Management reviewed the Reserve's underlying securities portfolio which is substantially comprised of discount notes, certificates of deposit and commercial paper issued by highly-rated institutions. Management evaluated the fair value of its unit interest in the Reserve itself, considering risk of collection, timing and other factors. These assumptions were inherently subjective and involved significant management judgment. As a result, during the year ended December 31, 2008, the Company classified its holdings in the Reserve within Level 3 of the fair value hierarchy.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company considers each category of investments held to be an asset group. The asset groups held at December 31, 2009 and 2008 were primarily U.S. government and agency securities, money market funds, corporate bonds and asset-backed securities. The Company's fair value assessment includes an evaluation by each of these securities held for sale, all of which continue to be classified within Level 2 of the fair value hierarchy.

The types of instruments valued based on other observable inputs include available-for-sale debt investments in other public companies, governmental units and other agencies. Such instruments are generally classified within Level 2 of the fair value hierarchy.

Short-Term and Long-Term Investments. The Company uses the specific identification method in computing realized gains or losses. Except for the Reserve, which was carried at its adjusted cost and none was outstanding as of December 31, 2009, short-term and long-term investments are classified as "available-for-sale" and are carried at fair value based on quoted market prices with unrealized gains and losses reported in stockholders' equity as a component of other comprehensive income or loss, net of any related tax effect. The Company reviews its investment portfolio quarterly to determine if any securities may be other-than-temporarily impaired due to increased credit risk, changes in industry or sector of a certain instrument or ratings downgrades over an extended period of time. The Company determined that these quoted market prices qualify as Level 1 and Level 2.

Derivative Assets and Liabilities. 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 December 31, 2009 and 2008, 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.

8. Convertible Debt

The Company's convertible debt consisted of the following as of December 31 (in thousands):

| | 2009 | 2008 |
|--|-------------------|------------------|
| Convertible Subordinated Debentures | \$ — | \$ 19,150 |
| 2.50% Convertible Subordinated Notes | 250,000 | 250,000 |
| 3.00% Convertible Subordinated Notes | 395,986 | 395,986 |
| 4.75% Convertible Subordinated Notes | 373,750 | — |
| | 1,019,736 | 665,136 |
| Less amount representing debt discount | (126,030) | (37,476) |
| | 893,706 | 627,660 |
| Less current portion | — | (19,150) |
| | <u>\$ 893,706</u> | <u>\$608,510</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Convertible Subordinated Debentures

In February 2004, the Company issued \$86,250,000 principal amount of 2.5% Convertible Subordinated Debentures due February 15, 2024 (the “Convertible Subordinated Debentures”). Interest was payable semi-annually, in arrears, on February 15th and August 15th of each year.

The Convertible Subordinated Debentures were governed by the Indenture dated February 11, 2004, between the Company, as issuer, and U.S. Bank National Association, as trustee (the “Convertible Subordinated Debentures Indenture”). The Convertible Subordinated Debentures Indenture did not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The Convertible Subordinated Debentures were unsecured and rank junior in right of payment to the Company’s existing or future senior debt. The Convertible Subordinated Debentures were convertible into shares of the Company’s common stock. Each \$1,000 principal amount of Convertible Subordinated Debentures was convertible into 25.3165 shares of the Company’s common stock. This represented an initial conversion price of approximately \$39.50 per share of common stock.

During the year ended December 31, 2007, the Company entered into agreements with the holders (“Holder or Holders”) of \$54,000,000 of its Convertible Subordinated Debentures, pursuant to which the Company agreed to exchange an aggregate of 1,367,090 newly issued shares of its common stock for such Holders’ Convertible Subordinated Debentures (the “Convertible Subordinated Debentures’ Partial Conversion”). Each Holder received cash consideration equal to accrued and unpaid interest through the redemption date totaling \$110,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling \$3,395,000 (the “Inducement Fee”). The Company recognized a loss on debt conversion totaling \$3,395,000 as a result of the Convertible Subordinated Debentures’ Partial Conversion in accordance with the accounting standard for induced conversions of convertible debt, due to the inducement fee. As a result of the Convertible Subordinated Debentures’ Partial Conversion, a net of \$53,229,000 was credited to stockholders’ equity during the year ended December 31, 2007.

During the year ended December 31, 2008, certain holders of the Convertible Subordinated Debentures converted \$13,100,000 principal amount of their Convertible Subordinated Debentures into 331,644 newly issued shares of our common stock.

During the year ended December 31, 2009, the Company entered into agreements with the holders of the remaining \$19,150,000 of the Convertible Subordinated Debentures to exchange an aggregate of 484,809 newly issued shares of the Company’s common stock to settle the Convertible Subordinated Debentures. As of December 31, 2009, there were no Convertible Subordinated Debentures outstanding.

2.50% Convertible Subordinated Notes

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

The 2.50% Convertible Subordinated Notes are governed by an Indenture dated as of March 30, 2007, between the Company, as issuer, and U.S. Bank National Association, as trustee (the “2.50% Convertible Subordinated Notes Indenture”). The 2.50% Convertible Subordinated Notes Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The 2.50% Convertible Subordinated Notes are unsecured and rank junior in right of payment to the Company’s existing or future senior debt and equal in right of payment to the Company’s existing and future subordinated debt.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Upon conversion, holders will receive, at the Company's election, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock. However, the Company may at any time irrevocably elect for the remaining term of the 2.50% Convertible Subordinated Notes to satisfy its obligation in cash up to 100% of the principal amount of the 2.50% Convertible Subordinated Notes converted, with any remaining amount to be satisfied, at the Company's election, in shares of its common stock or a combination of cash and shares of its common stock.

The initial conversion rate is 8.9259 shares of common stock per \$1,000 principal amount of 2.50% Convertible Subordinated Notes, subject to adjustment. This represents an initial conversion price of approximately \$112.03 per share of common stock. Holders of the 2.50% Convertible Subordinated Notes may convert their notes at any time prior to the close of business on the business day immediately preceding the maturity date under the following circumstances:

- during any fiscal quarter (and only during that fiscal quarter) ending after June 30, 2007, if the sale price of the Company's common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, which was \$145.64 per share as of December 31, 2009 (the "Stock Price Condition Conversion Clause");
- subject to certain exceptions, during the five business day period following any ten consecutive trading day period in which the trading price of the 2.50% Convertible Subordinated Notes for each day of such period was less than 98% of the product of the sale price of the Company's common stock and the conversion rate (the "2.50% Convertible Subordinated Notes Parity Provision Clause");
- if such Convertible Subordinated Notes have been called for redemption;
- upon the occurrence of specified corporate transactions described in the 2.50% Convertible Subordinated Notes Indenture, such as a consolidation, merger or binding share exchange in which the Company's common stock would be converted into cash or property other than securities (the "Corporate Action Provision Clause"); or
- at any time on or after March 15, 2012.

Upon conversion, due to the conversion formulas associated with the 2.50% Convertible Subordinated Notes, if the Company's stock is trading at levels exceeding 130% of the conversion price per share of common stock, and if the Company elects to pay any portion of the consideration in cash, additional consideration beyond the \$250,000,000 of gross proceeds received would be required. However, in no event would the total number of shares issuable upon conversion of the 2.50% Convertible Subordinated Notes exceed 11.6036 per \$1,000 principal amount of Convertible Subordinated Notes, subject to anti-dilution adjustments, or the equivalent of \$86.18 per share of common stock or a total of 2,900,900 shares of the Company's common stock. As of December 31, 2009, the 2.50% Convertible Subordinated Notes were convertible into 2,231,475 shares of the Company's common stock.

The conversion rates may be adjusted upon the occurrence of certain events, including for any cash dividend, but they will not be adjusted for accrued and unpaid interest. Holders of the 2.50% Convertible Subordinated Notes will not receive any cash payment representing accrued and unpaid interest upon conversion of a note. Accrued but unpaid interest will be deemed to be paid in full upon conversion rather than cancelled, extinguished or forfeited. The 2.50% Convertible Subordinated Notes called for redemption may be surrendered for conversion prior to the close of business on the business day immediately preceding the redemption date.

The Company may redeem all or a portion of the 2.50% Convertible Subordinated Notes at any time after April 16, 2010 for cash but only if the closing sale price of the Company's common stock for at least 20 of the 30

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

consecutive trading days immediately prior to the day the Company gives notice of redemption is greater than 130% of the applicable conversion price per share of common stock on the date of the notice, which was \$145.64 per share as of December 31, 2009. The redemption price will equal 100% of the principal amount of the 2.50% Convertible Subordinated Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

Holders of the 2.50% Convertible Subordinated Notes have the right to require the Company to purchase with cash all or a portion of the 2.50% Convertible Subordinated Notes upon the occurrence of a fundamental change such as change of control at a purchase price equal to 100% of the principal amount of the 2.50% Convertible Subordinated Notes plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Following certain corporate transactions that constitute a change of control, the Company will increase the conversion rate for a holder who elects to convert the 2.50% Convertible Subordinated Notes in connection with such change of control in certain circumstances.

In January 2009, the Company adopted a FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement). This FASB standard specifies that issuers of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. The Company's 2.50% Convertible Subordinated Notes fall within the scope of this FASB standard due to the Company's ability to elect to repay the 2.50% Convertible Subordinated Notes in cash. This FASB standard did not impact the Company's other convertible debt instruments that were outstanding as of January 1, 2009. This accounting standard was applied retrospectively.

The Company has determined that the embedded conversion option in the 2.50% Convertible Subordinated Notes is not required to be separately accounted for as a derivative under the accounting standard for derivatives and hedging. Under the FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement), the Company separated the 2.50% Convertible Subordinated Notes into a liability component and an equity component. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability (including any embedded features other than the conversion option) that does not have an associated equity component. The carrying amount of the equity component representing the embedded conversion option was determined by deducting the fair value of the liability component from the initial proceeds ascribed to the 2.50% Convertible Subordinated Notes as a whole. The excess of the principal amount of the liability component over its carrying amount is amortized to interest expense over the expected life of a similar liability that does not have an associated equity component using the effective interest method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification as prescribed in the accounting standard for derivative financial instruments indexed to, and potentially settled in, an entity's own common stock and the accounting standard for determining whether an instrument (or embedded feature) is indexed to an entity's own stock.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Issuance and transaction costs incurred at the time of the issuance of the 2.50% Convertible Subordinated Notes with third parties are allocated to the liability and equity components in proportion to the allocation of proceeds and accounted for as debt issuance costs and equity issuance costs, respectively. The 2.50% Convertible Subordinated Notes consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|---|------------------|------------------|
| Equity component ⁽¹⁾ | \$ 52,263 | \$ 52,263 |
| Liability component : | | |
| Principal | \$250,000 | \$250,000 |
| Less: debt discount, net ⁽²⁾ | (27,057) | (37,476) |
| Net carrying amount | <u>\$222,943</u> | <u>\$212,524</u> |

(1) Included in the consolidated balance sheets within additional paid-in capital.

(2) Included in the consolidated balance sheets within convertible debt and is amortized over the remaining life of the 2.50% Convertible Subordinated Notes.

As of December 31, 2009, the remaining life of the 2.50% Convertible Subordinated Notes was 2.29 years.

The following table sets forth total interest expense recognized related to the 2.50% Convertible Subordinated Notes during the year ended December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|--|-----------------|-----------------|
| Contractual interest expense | \$ 6,250 | \$ 6,250 |
| Amortization of debt issuance costs | 1,244 | 1,252 |
| Amortization of debt discount | 10,418 | 9,656 |
| Total interest expense | <u>\$17,912</u> | <u>\$17,158</u> |
| Effective interest rate of the liability component | 8.37% | 8.37% |

3.00% Convertible Subordinated Notes

In September 2007, the Company issued \$395,986,000 aggregate principal amount of 3.00% Convertible Subordinated Notes due October 15, 2014 (the “3.00% Convertible Subordinated Notes”). Interest is payable semi-annually on April 15 and October 15 of each year, and commenced April 15, 2008.

The 3.00% Convertible Subordinated Notes are governed by an Indenture dated as of September 26, 2007, between the Company, as issuer, and U.S. Bank National Association, as trustee (the “3.00% Convertible Subordinated Notes Indenture”). The 3.00% Convertible Subordinated Notes Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The 3.00% Convertible Subordinated Notes are unsecured and rank junior in right of payment to the Company’s existing or future senior debt and equal in right of payment to the Company’s existing and future subordinated debt.

Holders of the 3.00% Convertible Subordinated Notes may convert their notes at their option on any day up to and including the business day immediately preceding the maturity date into shares of the Company’s common stock. The base conversion rate is 7.436 shares of common stock per \$1,000 principal amount of 3.00% Convertible Subordinated Notes, subject to adjustment. This represents a base conversion price of approximately \$134.48 per share of common stock. If, at the time of conversion, the applicable stock price of the Company’s

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

common stock exceeds the base conversion price, the conversion rate will be determined pursuant to a formula resulting in the receipt of up to 4.4616 additional shares of common stock per \$1,000 principal amount of the 3.00% Convertible Subordinated Notes, subject to adjustment. However, in no event would the total number of shares issuable upon conversion of the 3.00% Convertible Subordinated Notes exceed 11.8976 per \$1,000 principal amount of 3.00% Convertible Subordinated Notes, subject to anti-dilution adjustments, or the equivalent of \$84.05 per share of the Company's common stock or a total of 4,711,283 shares of the Company's common stock. As of December 31, 2009, the 3.00% Convertible Subordinated Notes were convertible into 2,944,551 shares of the Company's common stock.

The conversion rates may be adjusted upon the occurrence of certain events, including for any cash dividend, but they will not be adjusted for accrued and unpaid interest. Holders of the 3.00% Convertible Subordinated Notes will not receive any cash payment representing accrued and unpaid interest upon conversion of a note. Accrued but unpaid interest will be deemed to be paid in full upon conversion rather than cancelled, extinguished or forfeited. The Company may not redeem the 3.00% Convertible Subordinated Notes at its option.

Holders of the 3.00% Convertible Subordinated Notes have the right to require the Company to purchase with cash all or a portion of the Convertible Subordinated Notes upon the occurrence of a fundamental change such as change of control at a purchase price equal to 100% of the principal amount of the 3.00% Convertible Subordinated Notes plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Following certain corporate transactions that constitute a change of control, the Company will increase the conversion rate for a holder who elects to convert the 3.00% Convertible Subordinated Notes in connection with such change of control in certain circumstances.

The Company has considered the accounting standard for debt with conversion and other options and for derivatives and hedging and has determined that the 3.00% Convertible Subordinated Notes do not contain a beneficial conversion feature as the fair value of the Company's common stock on the date of issuance was less than the initial conversion price outlined in the agreement.

4.75% Convertible Subordinated Notes

In June 2009, the Company issued \$373,750,000 aggregate principal amount of 4.75% Convertible Subordinated Notes due June 15, 2016 (the "4.75% Convertible Subordinated Notes"). Interest is payable semi-annually on June 15 and December 15 of each year, beginning December 15, 2009.

The 4.75% Convertible Subordinated Notes are governed by an Indenture dated as of June 12, 2009, between the Company, as issuer, and U.S. Bank National Association, as trustee (the "4.75% Convertible Subordinated Notes Indenture"). The 4.75% Convertible Subordinated Notes Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The 4.75% Convertible Subordinated Notes are unsecured and rank junior in right of payment to the Company's existing or future senior debt and equal in right of payment to the Company's existing and future subordinated debt.

Upon conversion, holders will receive, at the Company's election, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock. However, the Company may at any time irrevocably elect for the remaining term of the 4.75% Convertible Subordinated Notes to satisfy its obligation in cash up to 100% of the principal amount of the 4.75% Convertible Subordinated Notes, with any remaining amount to be satisfied, at the Company's election, in shares of its common stock or a combination of cash and shares of its common stock.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The initial conversion rate is 11.8599 shares of common stock per \$1,000 principal amount of 4.75% Convertible Subordinated Notes, subject to adjustment. This represents an initial conversion price of approximately \$84.32 per share of common stock. Holders of the 4.75% Convertible Subordinated Notes may convert their notes at any time prior to the close of business on the business day immediately preceding the maturity date under the following circumstances:

- during any fiscal quarter (and only during that fiscal quarter) ending after December 31, 2009, if the sale price of the Company's common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, which was \$109.62 per share (the "Stock Price Condition Conversion Clause");
- subject to certain exceptions, during the five business day period following any 10 consecutive trading day period in which the trading price of the 4.75% Convertible Subordinated Notes for each day of such period was less than 98% of the product of the sale price of the Company's common stock and the conversion rate (the "4.75% Convertible Subordinated Notes Parity Provision Clause");
- upon the occurrence of specified corporate transactions described in the 4.75% Convertible Subordinated Notes Indenture, such as a consolidation, merger or binding share exchange in which the Company's common stock would be converted into cash or property other than securities (the "Corporate Action Provision Clause"); or
- at any time on or after March 15, 2016.

Upon conversion, if the Company elected to pay a sufficiently large portion of the conversion obligation in cash, additional consideration beyond the \$373,750,000 of gross proceeds received would be required. As of December 31, 2009, the 4.75% Convertible Subordinated Notes were convertible into 4,432,638 shares of the Company's common stock.

The conversion rates may be adjusted upon the occurrence of certain events, including for any cash dividend, but they will not be adjusted for accrued and unpaid interest. Holders of the 4.75% Convertible Subordinated Notes will not receive any cash payment representing accrued and unpaid interest upon conversion of a note. Accrued but unpaid interest will be deemed to be paid in full upon conversion rather than cancelled, extinguished or forfeited.

The Company does not have the right to redeem the 4.75% Convertible Subordinated Notes at its option. Holders of the 4.75% Convertible Subordinated Notes have the right to require the Company to purchase with cash all or a portion of the 4.75% Convertible Subordinated Notes upon the occurrence of a fundamental change, such as a change of control at a purchase price equal to 100% of the principal amount of the 4.75% Convertible Subordinated Notes plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Following certain corporate transactions that constitute a change of control, the Company will increase the conversion rate for a holder who elects to convert the 4.75% Convertible Subordinated Notes in connection with such change of control in certain circumstances.

Under a FASB standard for convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement), the Company separated the 4.75% Convertible Subordinated Notes into a liability component and an equity component. The carrying amount of the liability component was calculated by measuring the fair value of a similar liability (including any embedded features other than the conversion option) that does not have an associated equity component. The carrying amount of the equity component representing the embedded conversion option was determined by deducting the fair value of the liability component from the initial proceeds ascribed to the 4.75% Convertible Subordinated Notes as a whole. The excess of the principal

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

amount of the liability component over its carrying amount is amortized to interest expense over the expected life of a similar liability that does not have an associated equity component using the effective interest method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification as prescribed in the accounting standard for derivative financial instruments indexed to, and potentially settled in, an entity's own common stock and the accounting standard for determining whether an instrument (or embedded feature) is indexed to an entity's own stock.

Issuance and transaction costs incurred at the time of the issuance of the 4.75% Convertible Subordinated Notes with third parties are allocated to the liability and equity components and accounted for as debt issuance costs and equity issuance costs, respectively. Debt issuance costs related to the 4.75% Convertible Subordinated Notes, net of amortization, were \$6,604,000 as of December 31, 2009 and equity issuance costs were \$2,796,000. Additionally, the Company recorded a deferred tax liability of \$21,998,000 in connection with the 4.75% Convertible Subordinated Notes and the Capped Call (see below). The 4.75% Convertible Subordinated Notes consisted of the following as of December 31 (in thousands):

| | <u>2009</u> |
|---|-------------------|
| Equity component ⁽¹⁾ | <u>\$ 104,794</u> |
| Liability component : | |
| Principal | \$ 373,750 |
| Less: debt discount, net ⁽²⁾ | <u>(98,973)</u> |
| Net carrying amount | <u>\$ 274,777</u> |

(1) Included in the consolidated balance sheets within additional paid-in capital.

(2) Included in the consolidated balance sheets within convertible debt and is amortized over the remaining life of the 4.75% Convertible Subordinated Notes.

As of December 31, 2009, the remaining life of the 4.75% Convertible Subordinated Notes was 6.5 years.

The following table sets forth total interest expense recognized related to the 4.75% Convertible Subordinated Notes for the year ended December 31 (in thousands):

| | <u>2009</u> |
|--|-----------------|
| Contractual interest expense | \$ 9,814 |
| Amortization of debt issuance costs | 573 |
| Amortization of debt discount | <u>5,820</u> |
| | <u>\$16,207</u> |
| Effective interest rate of the liability component | 10.88% |

To minimize the impact of potential dilution upon conversion of the 4.75% Convertible Subordinated Notes, the Company entered into capped call transactions ("the Capped Call") separate from the issuance of the 4.75% Convertible Subordinated Notes and paid a premium of \$49,664,000 for the Capped Call. The Capped Call covers a total of approximately 4,432,638 shares of the Company's common stock, subject to adjustment. Under the Capped Call, the Company effectively raised the conversion price of the 4.75% Convertible Subordinated Notes from \$84.32 to \$114.82. Depending upon the Company's stock price at the time the 4.75% Convertible Subordinated Notes are redeemed, the Capped Call will return up to 1,177,456 shares of the Company's common stock to the Company; however, the Company will receive no benefit from the Capped Call if the Company's stock price is \$84.32 or lower at the time of conversion and will receive less shares than the 1,177,456 share

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

maximum as described above for share prices in excess of \$114.82 at the time of conversion than it would have received at a share price of \$114.82 (the Company's benefit from the Capped Call is capped at \$114.82 and the benefit received begins to decrease above this price). In connection with the Capped Call, the Company recorded a \$19,000 derivative loss in its consolidated statement of operations for the year ended December 31, 2009, and the remaining \$49,645,000 was recorded in additional paid-in capital pursuant to the accounting standard for derivative financial instruments indexed to, and potentially settled in, an entity's own common stock and the accounting standard for determining whether an instrument (or embedded feature) is indexed to an entity's own stock.

9. Non-Convertible Debt

The Company's non-convertible debt consisted of the following as of December 31 (in thousands):

| | 2009 | 2008 |
|---------------------------------------|-------------------|-------------------|
| European financing | \$ 130,058 | \$ 130,981 |
| Chicago IBX financing | 109,991 | 109,991 |
| Mortgage payable | 91,756 | 94,362 |
| Asia-Pacific financing | 64,559 | 87,009 |
| Singapore financing | 24,559 | — |
| Netherlands financing | 9,311 | 6,485 |
| Bank of America revolving credit line | — | — |
| Other note payable | — | 9,672 |
| | <u>430,234</u> | <u>438,500</u> |
| Less current portion | (58,912) | (52,054) |
| | <u>\$ 371,322</u> | <u>\$ 386,446</u> |

European Financing

In September 2007, as a result of the IXEurope Acquisition (see Note 2), a wholly-owned subsidiary of the Company acquired a senior facilities agreement totaling approximately 82,000,000 British pounds, or approximately \$132,600,000 (the "European Financing"). The European Financing is comprised of three facilities: (i) Facility A, which was available to draw upon through March 2008, provided for a term loan of up to approximately 40,000,000 British pounds and bears a floating interest rate per annum of between 0.875% and 2.25% above LIBOR or EURIBOR; (ii) Facility B, which was available to draw upon through June 2010, provided for a term loan of up to approximately 40,000,000 British pounds and bears a floating interest rate per annum of between 0.875% and 2.25% above LIBOR or EURIBOR and (iii) Facility C, which is available to draw upon through May 2014, provides for a revolving credit facility of up to approximately 2,000,000 British pounds and bears a floating interest rate per annum of between 0.875% and 2.125% above LIBOR or EURIBOR (collectively, the "Loans Payable"). As of December 31, 2009, the Company had fully utilized Facility A and Facility B under the European Financing. The European Financing has a final maturity date of June 30, 2014 and interest is payable in periods of one, two, three or six months at the election of the Company. Facility A will be repaid in 13 semi-annual installments, which commenced June 30, 2008. Facility B will be repaid in nine semi-annual installments commencing June 30, 2010. Facility C will be repaid at the final maturity date. The European Financing is available to fund the Company's current or future operations in Europe, including capital expenditures, for certain subsidiaries in Europe and amounts can be drawn in British pounds, Euros or Swiss francs. Loans payable under the European Financing are available to fund certain of the Company's expansion projects in France, Germany, Switzerland and the United Kingdom. Under the European Financing, the use of

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

cash currently available in these certain European subsidiaries, which was \$67,199,000 as of December 31, 2009, is limited to the general working capital needs of these subsidiaries or repaying the European Financing. The European Financing is collateralized by certain of the Company's assets in Europe and contains several financial covenants specific to the Company's European operations, with which the Company must comply quarterly. In January 2009, the Company amended certain provisions of the European Financing effective December 31, 2008 related to certain financial covenants and acknowledgment of the appointment of an executive officer in Europe. As of December 31, 2009, the Company was in compliance with all financial covenants in connection with the European Financing. As of December 31, 2009, the European Financing had an approximate blended interest rate of 1.62% per annum.

Upon a written request from the Company at any time after December 31, 2007 and through the final maturity date, and upon approval by the lenders, an additional term loan of up to approximately 15,000,000 British pounds, or approximately \$24,247,000, may be made available to the Company.

The European Financing requires the Company to hedge the floating interest rates inherent in the European Financing (on just a portion of the total amounts outstanding). In May 2008, the Company entered into three interest rate swap agreements to hedge the interest payments on the equivalent principal of \$89,065,000 of the European Financing, which will mature in May 2011. Under the terms of the interest rate swap transactions, the Company receives interest payments based on rolling one-month EURIBOR and LIBOR terms and pay fixed interest rates ranging from 5.59% to 7.03% (swap rates ranging from 4.46% to 5.91% plus borrowing margin) (see Note 6).

Chicago IBX Financing

In February 2007, a wholly-owned subsidiary of the Company obtained a loan of up to \$110,000,000 to finance up to 60% of the development and construction costs of an expansion project in the Chicago metro area (the "Chicago IBX Financing"). The Company periodically received advances of funds in conjunction with costs incurred for construction of its expansion project in the Chicago metro area (collectively, the "Loan Payable"). As of December 31, 2008, the Company had received advances representing the final Loan Payable totaling \$109,991,000.

The Loan Payable has an initial maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. In January 2010, the Company utilized one of the options to extend the Loan Payable under the Chicago IBX Financing for one year, which now is set to expire on January 31, 2011. As a result of this extension, the Loan Payable is repaid in monthly installments beginning in February 2010. The Loan Payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced in March 2007. As of December 31, 2009, the Loan Payable had an approximate interest rate of 3.0% per annum. The Chicago IBX Financing has no specific financial covenants and contains a limited parent company guaranty. In January 2010, the Company exercised its option to extend the Chicago IBX Financing for a year, which changes the maturity date to January 31, 2011.

In May 2008, the Company entered into an interest rate swap agreement with one counterparty to hedge the interest payments on principal of \$105,000,000 of the Chicago IBX Financing, which will mature in February 2011. Under the terms of the interest rate swap transaction, we receive interest payments based on rolling one-month LIBOR terms and pay fixed interest rate of 6.34% (swap rate of 3.59% plus borrowing margin of 2.75%) (see Note 6).

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Mortgage Payable

In December 2005, the Company financed the Ashburn Campus Property Acquisition with a \$60,000,000, 8% mortgage to be amortized over 20 years (the “Mortgage Payable”). Payments for the Mortgage Payable are payable monthly, commenced February 2006, and will be payable through January 2026. The Mortgage Payable is collateralized by the Ashburn Campus property and related assets. Pursuant to the terms of the Mortgage Payable, the Company agreed to invest at least \$40,000,000 in capital improvements to the Ashburn Campus by December 31, 2007. In December 2006, the Company obtained additional financing of \$40,000,000, which increased the total amount financed by the Mortgage Payable from \$60,000,000 to \$100,000,000, on the same terms as the initial Mortgage Payable. The Company used this additional funding to finance expansion projects in the Washington, D.C. metro area. The Mortgage Payable has numerous covenants; however, there are no specific financial ratios or minimum operating performance covenants. As of December 31, 2009, the Company was in compliance with all covenants in connection with the Mortgage Payable.

Asia-Pacific Financing

In August 2007, two wholly-owned subsidiaries of the Company, located in Singapore and Tokyo, Japan, entered into an approximately \$47,900,000 multi-currency credit facility agreement (the “Asia-Pacific Financing”), which is comprised of 23,000,000 Singapore dollars and 2,932,500,000 Japanese yen, respectively. During the year ended December 31, 2008, the Asia-Pacific Financing was amended to also enable our subsidiaries in Australia and Hong Kong to borrow up to 32,000,000 Australian dollars and 156,000,000 Hong Kong dollars, respectively, under the same general terms, amending the Asia-Pacific Financing into an approximately \$96,700,000 multi-currency credit facility agreement. The Asia-Pacific Financing has a four-year term that allows these four subsidiaries to borrow up to their credit limits during the first 12-month period with repayment to occur over the remaining three years in twelve 12 quarterly installments (collectively, the “Loans Payable”). The Asia-Pacific Financing bears interest at a floating rate (the relevant three-month local cost of funds), as applicable, plus 1.85%-2.50% depending on the ratio of the Company’s senior indebtedness to its earnings before interest, taxes, depreciation and amortization, or EBITDA, with interest payable quarterly. Loans Payable under the Asia-Pacific Financing have a final maturity date of March 2012. The Asia-Pacific Financing may be used by these four subsidiaries to fund capital expenditures on leasehold improvements, equipment, and other installation costs related to expansion plans in Singapore, Tokyo, Sydney and Hong Kong. The Asia-Pacific Financing is guaranteed by the parent, Equinix, Inc., is secured by the assets of these four subsidiaries, including a pledge of their shares, and has several financial covenants specific to the Company’s Asia-Pacific operations, with which the Company must comply quarterly. As of December 31, 2009, Loans Payable under the Asia-Pacific Financing had an approximate blended interest rate of 3.45% per annum. The Loans Payable under the Asia-Pacific Financing have a final maturity date of March 2012. As of December 31, 2009, the Company was in compliance with all financial covenants in connection with the Asia-Pacific Financing.

Singapore Financing

In September 2009, the Company’s wholly-owned subsidiary in Singapore entered into a 37,000,000 Singapore dollar, or approximately \$26,338,000, credit facility agreement (the “Singapore Financing”). The Singapore Financing is comprised of two tranches: (i) Facility A, which is available for drawing upon through March 18, 2010, provides a term loan of up to 34,500,000 Singapore dollars and (ii) Facility B, which is available for drawing upon through September 12, 2010, provides a term loan of up to 2,500,000 Singapore dollars. Facility A will be repaid in nine semi-annual installments beginning August 2010 and Facility B will be repaid in eight semi-annual installments beginning February 2011 (collectively, the “Loan Payable”). As of December 31, 2009, the Company had fully utilized Facility A under the Singapore Financing. The Loan Payable under the Singapore Financing bears interest at a floating rate (Swap offer rate plus 3.65% per annum). The Singapore Financing has a final maturity date of August 31, 2014 and interest is payable in periods of one, three

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

or six months at the election of the Company's Singaporean subsidiary. The Singapore Financing is guaranteed by the parent, Equinix, and is secured by the assets of the Company's second IBX data center in Singapore. The Singapore Financing has several financial covenants specific to the Company's operations in Singapore, with which the Company must comply periodically commencing in the second quarter of 2010. As of December 31, 2009, the Loan Payable under the Singapore Financing had an approximate interest rate per annum of 4.20%.

Netherlands Financing

In February 2008, as a result of the Virtu Acquisition, a wholly-owned subsidiary of the Company assumed senior credit facilities totaling approximately 5,500,000 Euros (the "Netherlands Financing"), which are callable by the lender and bear interest at a floating rate (three month EURIBOR plus 1.25%). In June 2009, the Company's wholly-owned subsidiary in the Netherlands amended the Netherlands Financing by entering into a 7,000,000 Euro term loan to replace the previously outstanding senior credit facilities. The Netherlands Financing contains several financial covenants, which the Company must comply with annually, is guaranteed by the Company and is collateralized by substantially all of the Company's operations in the Netherlands (collectively, the "Loan Payable"). The Netherlands Financing has a final maturity date of June 30, 2016 with repayment to occur over the remaining seven years in 28 equal quarterly installments, which commenced in September 2009. The Loan Payable under the Netherlands Financing bears interest at a floating rate (three month EURIBOR plus 3.60% per annum). As of December 31, 2009, the Loan Payable under the Netherlands Financing had an approximate interest rate per annum of 4.31%. As of December 31, 2009, the Company was in compliance with all financial covenants in connection with the Netherlands Financing.

Bank of America Revolving Credit Line

In February 2009, the Company and one of its wholly-owned subsidiaries, as co-borrower, entered into a \$25,000,000 one-year revolving credit facility with Bank of America (the "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 (see Note 18). 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 December 31, 2009, 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 December 31, 2009, the Company had issued 17 irrevocable letters of credit totaling \$16,691,000 under the Bank of America Revolving Credit Line, which resulted in the release of restricted cash (see "Other Assets" in Note 5). As a result, the amount available to borrow was \$8,309,000 as of December 31, 2009.

Other Note Payable

The other note payable arose from a 2005 lease restructuring and was a non-interest bearing note with an imputed interest rate of 6.14% per annum. Payments under the other note payable, which originally totaled \$20,000,000, were payable quarterly and were paid through the fourth quarter of 2009. As of December 31, 2009, there was no other note payable outstanding.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Silicon Valley Bank Credit Line

In December 2004, the Company entered into a \$25,000,000 credit line arrangement with Silicon Valley Bank, which was subsequently amended to increase the line up to \$75,000,000 (the “Silicon Valley Bank Credit Line”). Borrowings under the Silicon Valley Bank Credit Line, if drawn, bore interest at variable interest rates, plus the applicable margins, in effect prior to the amendment, based on either prime rates or LIBOR rates. The Silicon Valley Bank Credit Line had an original maturity of September 15, 2008 and was secured by substantially all of the Company’s domestic personal property assets and certain of the Company’s real property leases. The Silicon Valley Bank Credit Line also featured sublimits, which enabled the Company to issue letters of credit. The Company entered into seven irrevocable letters of credit with the Silicon Valley Bank, which were collateralized by the Silicon Valley Bank Credit Line.

In February 2008, the Company terminated the Silicon Valley Bank Credit Line. As a result, all letters of credit issued and outstanding under the Silicon Valley Bank Credit Line, totaling \$12,144,000, were funded as restricted cash on the Company’s consolidated balance sheets (see “Other Assets” in Note 5). As of the termination date, the Company had no borrowings outstanding under the Silicon Valley Bank Credit Line and no termination penalties were incurred.

Senior Bridge Loan

In June 2007, the Company entered into a Senior Bridge Loan Credit Agreement (the “Senior Bridge Loan”) with Citibank, N.A., as Lender, and as agent for the Lender, for a principal amount of \$500,000,000, to secure temporary financing for the IXEurope Acquisition.

The Company incurred \$2,554,000 of debt issuance costs in securing the Senior Bridge Loan. The Senior Bridge Loan was never drawn and terminated in September 2007. As a result, the Company recorded a loss on debt extinguishment totaling \$2,554,000 reflecting the immediate write-off of all such debt issuance costs previously capitalized.

10. Capital Lease and Other Financing Obligations

Capital lease and other financing obligations consisted of the following as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|---|-------------------|-------------------|
| Paris IBX capital lease | \$ 40,597 | \$ 40,047 |
| Los Angeles IBX financing | 37,363 | 37,700 |
| Washington, D.C. metro area IBX capital lease | 30,119 | 31,513 |
| London IBX financing (see Note 3) | 14,003 | — |
| San Jose IBX equipment & fiber financing | 13,723 | 14,164 |
| Zurich IBX financing (see Note 3) | 11,470 | — |
| Chicago IBX equipment financing | 6,171 | 6,905 |
| Other capital lease and financing obligations | 7,583 | 7,201 |
| | <u>161,029</u> | <u>137,530</u> |
| Less current portion | <u>(6,452)</u> | <u>(4,499)</u> |
| | <u>\$ 154,577</u> | <u>\$ 133,031</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Paris IBX Capital Lease

In October 2008, the Company recorded the Paris IBX Capital Lease. Monthly payments under the Paris IBX Capital Lease commenced in June 2009 and will be made through September 2020 at an effective interest rate of 7.43% per annum.

Los Angeles IBX Financing

In December 2005, the Company recorded the Los Angeles IBX Financing. Monthly payments under the Los Angeles IBX Financing commenced in January 2006 and will be made through December 2025 at an effective interest rate of 7.75% per annum.

Washington, D.C. Metro Area IBX Capital Lease

In November 2004, the Company recorded the Washington, D.C. Metro Area IBX Capital Lease. Monthly payments under the Washington, D.C. Metro Area IBX Capital Lease commenced in November 2004 and will be made through October 2019 at an effective interest rate of 8.50% per annum.

San Jose IBX Equipment & Fiber Financing

In February 2005, the Company recorded the San Jose IBX Equipment & Fiber Financing. Monthly payments under the San Jose IBX Equipment & Fiber Financing commenced in February 2005 and will be made through May 2020 at an effective interest rate of 8.50% per annum.

Chicago IBX Equipment Financing

In November 2005, the Company recorded the Chicago IBX Equipment Financing. Monthly payments under the Chicago IBX Equipment Financing commenced in November 2005 and will be made through August 2015 at an effective interest rate of 7.50% per annum.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

11. Debt Maturities

Combined aggregate maturities for the Company's various debt facilities and other financing obligations as of December 31, 2009 were as follows (in thousands) (unaudited):

| | Convertible debt ⁽¹⁾ | Mortgage and loans payable ⁽¹⁾ | Capital lease and other financing obligations ⁽²⁾ | Total |
|---|------------------------------------|---|---|--------------------|
| 2010 | \$ — | \$ 58,912 | \$ 17,477 | \$ 76,389 |
| 2011 | — | 62,486 | 19,507 | 81,993 |
| 2012 | 250,000 | 134,650 ⁽³⁾ | 19,392 | 404,042 |
| 2013 | — | 36,669 | 19,497 | 56,166 |
| 2014 | 395,986 | 60,307 | 20,033 | 476,326 |
| 2015 and thereafter | 373,750 | 77,210 | 162,398 | 613,358 |
| | <u>1,019,736</u> | <u>430,234</u> | <u>258,304</u> | <u>1,708,274</u> |
| Less amount representing interest | — | — | (115,809) | (115,809) |
| Less amount representing debt discount | (126,030) | — | — | (126,030) |
| Less amount representing remaining estimated building costs | — | — | (1,498) | (1,498) |
| Plus amount representing residual property value | — | — | 20,032 | 20,032 |
| | <u>893,706</u> | <u>430,234</u> | <u>161,029</u> | <u>1,484,969</u> |
| Less current portion of principal | — | (58,912) | (6,452) | (65,364) |
| | <u>\$ 893,706</u> | <u>\$ 371,322</u> | <u>\$ 154,577</u> | <u>\$1,419,605</u> |

(1) Represents principal only.

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

(3) The loan payable under the Chicago IBX Financing had an initial maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. In January 2010, the Company utilized one of the options to extend the loan payable under the Chicago IBX Financing for one year, which is set to expire on January 31, 2011. The Company intends to exercise the remaining one-year extension option.

12. Stockholders' Equity

The Company's authorized share capital is 300,000,000 shares of common stock and 100,000,000 shares of preferred stock, of which 25,000,000 is designated Series A, 25,000,000 is designated as Series A-1 and 50,000,000 is undesignated. As of December 31, 2009 and 2008, the Company had no preferred stock issued and outstanding.

Common Stock

As of December 31, 2009, the Company has reserved the following shares of authorized but unissued shares of common stock for future issuance:

| | |
|--|-------------------|
| Conversion of 2.50% Convertible Subordinated Notes | 2,900,900 |
| Conversion of 3.00% Convertible Subordinated Notes | 4,711,283 |
| Conversion of 4.75% Convertible Subordinated Notes | 4,432,638 |
| Common stock options, restricted shares and restricted stock units | 8,999,828 |
| Common stock employee purchase plans | 2,268,580 |
| Common stock warrant | 1,034 |
| | <u>23,314,263</u> |

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Equity Compensation Plans

In May 2000, the Company's stockholders approved the adoption of the 2000 Equity Incentive Plan as the successor plan to the 1998 Stock Plan. Beginning in August 2000, the Company no longer issued additional grants under the 1998 Stock Plan, and unexercised options under the 1998 Stock Plan that cancel due to an optionee's termination may be reissued under the successor 2000 Equity Incentive Plan. Under the 2000 Equity Incentive Plan, nonstatutory stock options, restricted shares, restricted stock units, and stock appreciation rights may be granted to employees, outside directors and consultants at not less than 85% of the fair value on the date of grant, and incentive stock options may be granted to employees at not less than 100% of the fair value on the date of grant. Options granted prior to October 1, 2005 generally expire 10 years from the grant date, and equity awards granted to employees and consultants on or after October 1, 2005 will generally expire seven years from the grant date, subject to continuous service of the optionee. Equity awards granted under the 2000 Equity Incentive Plan generally vest over four years. As of December 31, 2009, the Company had reserved a total of 14,449,011 shares for issuance under the 2000 Equity Incentive Plan of which 5,189,178 were still available for grant, and the plan reserve is increased on January 1 each year through January 1, 2010 by the lesser of 6% of the common stock then outstanding or 6,000,000 shares. The 2000 Equity Incentive Plan is administered by the Compensation Committee of the Board of Directors, and the Compensation Committee may terminate or amend the plan, with approval of the stockholders as may be required by applicable law, at any time.

In May 2000, the Company's stockholders approved the adoption of the 2000 Director Option Plan, which was amended and restated effective January 1, 2003. Under the 2000 Director Option Plan, each non-employee board member who was not previously an employee of the Company will receive an automatic initial nonstatutory stock option grant, which vests in four annual installments. In addition, each non-employee board member will receive an annual non-statutory stock option grant on the date of the Company's regular Annual Meeting of Stockholders, provided the board member will continue to serve as a director thereafter. Such annual option grants shall vest in full on the earlier of a) the first anniversary of the grant, or b) the date of the regular Annual Meeting of Stockholders held in the year following the grant date. A new director who receives an initial option will not receive an annual option in the same calendar year. Options granted under the 2000 Director Option Plan will have an option price not less than 100% of the fair value on the date of grant and will have a 10-year contractual term, subject to continuous service of the board member. On December 18, 2008, the Company's Board of Directors passed resolutions eliminating all automatic stock option grant mechanisms under the 2000 Director Plan, and replaced them with an automatic restricted stock unit grant mechanism under the 2000 Equity Incentive Plan. As of December 31, 2009, the Company had reserved 543,440 shares subject to options for issuance under the 2000 Director Option Plan of which 455,938 were still available for grant and an additional 50,000 shares is added to the reserve on January 1 each year through January 1, 2010. The 2000 Director Option Plan is administered by the Compensation Committee of the Board of Directors, and the Compensation Committee may terminate or amend the plan, with approval of the stockholders as may be required by applicable law, at any time.

In September 2001, the Company adopted the 2001 Supplemental Stock Plan, under which non-statutory stock options and restricted shares/restricted stock units may be granted to consultants and employees who are not executive officers or board members, at not less than 85% of the fair value on the date of grant. Options granted prior to October 1, 2005 generally expire 10 years from the grant date, and options granted on or after October 1, 2005 will generally expire seven years from the grant date, subject to continuous service of the optionee. Current stock options granted under the 2001 Supplemental Stock Plan generally vest over four years. As of December 31, 2009, the Company had reserved a total of 1,493,961 shares for issuance under the 2001 Supplemental Stock Plan, of which 260,189 were still available for grant. The 2001 Supplemental Stock Plan is administered by the Compensation Committee of the Board of Directors, and the plan will continue in effect indefinitely unless the Compensation Committee decides to terminate it earlier.

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EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The 1998 Stock Plan, 2000 Equity Incentive Plan, 2000 Director Option Plan and 2001 Supplemental Stock Plan are collectively referred to as the “Equity Compensation Plans.”

Stock Options

Stock option activity under the Equity Compensation Plans is summarized as follows:

| | Number of shares outstanding | Weighted- average exercise price per share |
|--|------------------------------------|--|
| Stock options outstanding at December 31, 2006 | 3,312,315 | \$ 45.11 |
| Stock options granted | 944,500 | 83.03 |
| Stock options exercised | (941,315) | 33.55 |
| Stock options canceled | (184,582) | 61.38 |
| Stock options outstanding at December 31, 2007 | 3,130,918 | 59.06 |
| Stock options granted | 88,600 | 81.60 |
| Stock options exercised | (519,987) | 38.30 |
| Stock options canceled | (142,078) | 74.89 |
| Stock options outstanding at December 31, 2008 | 2,557,453 | 63.18 |
| Stock options granted | — | — |
| Stock options exercised | (621,628) | 48.89 |
| Stock options canceled | (64,854) | 97.58 |
| Stock options outstanding at December 31, 2009 | <u>1,870,971</u> | 66.74 |

The total intrinsic value of stock options exercised during the years ended December 31, 2009, 2008 and 2007 was \$23,701,000, \$24,335,000 and \$54,190,000, respectively. The intrinsic value is calculated as the difference between the market value of the stock on the date of exercise and the exercise price of the option. The total fair value of options vested during the years ended December 31, 2009, 2008 and 2007 was \$19,066,000, \$27,076,000 and \$26,321,000, respectively. In July 2008, the Company began granting restricted stock units exclusively in lieu of stock options.

The following table summarizes information about outstanding stock options as of December 31, 2009:

| Range of exercise prices | Outstanding | | | Exercisable | |
|--------------------------|---------------------|--|---|---------------------|---|
| | Number of shares | Weighted- average remaining contractual life | Weighted- average exercise price | Number of shares | Weighted- average exercise price |
| \$2.96 to \$30.02 | 210,881 | 3.67 | \$ 20.14 | 210,881 | \$ 20.14 |
| \$30.38 to \$44.49 | 194,181 | 4.65 | 39.36 | 194,181 | 39.36 |
| \$44.70 to \$52.51 | 213,346 | 4.66 | 45.49 | 204,573 | 45.35 |
| \$52.85 to \$52.85 | 295,677 | 3.16 | 52.85 | 284,738 | 52.85 |
| \$53.09 to \$74.91 | 140,299 | 4.15 | 63.04 | 91,113 | 61.16 |
| \$75.38 to \$75.38 | 284,412 | 4.00 | 75.38 | 176,590 | 75.38 |
| \$78.12 to \$92.29 | 200,825 | 4.91 | 85.45 | 126,036 | 85.30 |
| \$93.78 to \$158.00 | 313,116 | 3.51 | 115.49 | 242,547 | 119.70 |
| \$187.00 to \$312.00 | 18,234 | 0.60 | 221.89 | 18,234 | 221.89 |
| | <u>1,870,971</u> | 3.96 | 66.74 | <u>1,548,893</u> | 63.87 |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As of December 31, 2009, 2008 and 2007, the weighted average remaining contractual life of options outstanding was 3.96 years, 4.90 years and 5.77 years, respectively. The weighted-average exercise price of options outstanding at December 31, 2009, 2008 and 2007 was \$66.74, \$63.18 and \$59.06, respectively. The weighted-average exercise price of options exercisable at December 31, 2009, 2008 and 2007 was \$63.87, \$58.66 and \$51.16, respectively.

The Company provides the following additional disclosures for stock options as of December 31 (dollars in thousands):

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|---|-------------|-------------|-------------|
| Total aggregated intrinsic value of stock options outstanding | \$ 80,104 | \$ 17,683 | \$ 139,879 |
| Total aggregated intrinsic value of stock options exercisable | 71,783 | 16,506 | 81,505 |
| Weighted average remaining contractual life of stock options exercisable (in years) | 3.87 | 4.69 | 5.41 |

Fair Value Calculations—Stock Options

The Company uses the Black-Scholes option-pricing model to determine the fair value of stock options with the following weighted average assumptions for the years ended December 31:

| | <u>2008</u> | <u>2007</u> |
|--------------------------|-------------|-------------|
| Dividend yield | 0% | 0% |
| Expected volatility | 52% | 63% |
| Risk-free interest rate | 3.12% | 4.54% |
| Expected life (in years) | 4.9 | 4.6 |

The weighted-average fair value of stock options per share on the date of grant was \$39.22 and \$45.10, respectively, for the years ended December 31, 2008 and 2007.

Restricted Shares and Restricted Stock Units

Restricted Shares (Unissued Shares at Grant)

In 2005, the Company granted 160,000 restricted shares to its executives. These restricted shares only became issued and outstanding shares when they vested. The activity of these restricted shares is summarized as follows:

| | <u>Number of shares outstanding</u> | <u>Weighted- average grant date fair value per share</u> |
|--|---|--|
| Restricted shares outstanding, December 31, 2006 | 160,000 | \$ 43.76 |
| Restricted shares issued, vested | (64,000) | 43.76 |
| Restricted shares outstanding, December 31, 2007 | 96,000 | 43.76 |
| Restricted shares issued, vested | (64,000) | 43.76 |
| Restricted shares outstanding, December 31, 2008 | 32,000 | 43.76 |
| Restricted shares issued, vested | (32,000) | 43.76 |
| Restricted shares outstanding, December 31, 2009 | <u>—</u> | <u>—</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Restricted Shares (Issued and Outstanding Shares at Grant)

During the years ended December 31, 2007 and 2006, the Company granted a total of 557,000 restricted shares to its executive officers and, at the same time, issued these shares into an escrow account under the names of each of the executive officers. These shares have voting rights and are considered issued and outstanding. They are released from the escrow account as they vest. However, they are subject to forfeiture (and, therefore, canceled) if the individual officers do not meet the vesting requirements. The activity of these restricted shares is as follows:

| | Number of shares outstanding | Weighted- average grant date fair value per share |
|--|------------------------------------|---|
| Restricted shares outstanding, December 31, 2006 | 247,750 | \$ 44.55 |
| Restricted shares granted | 283,000 | 73.96 |
| Restricted shares released, vested | (73,505) | 48.68 |
| Restricted shares canceled | — | — |
| Restricted shares outstanding, December 31, 2007 | 457,245 | 62.09 |
| Restricted shares granted | — | — |
| Restricted shares released, vested | (153,169) | 63.09 |
| Restricted shares canceled | (21,166) | 77.11 |
| Restricted shares outstanding, December 31, 2008 | 282,910 | 60.42 |
| Restricted shares granted | — | — |
| Restricted shares released, vested | (137,535) | 55.40 |
| Restricted shares canceled | (28,875) | 61.49 |
| Restricted shares outstanding, December 31, 2009 | <u>116,500</u> | 66.09 |

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Restricted Stock Units

During the year ended December 31, 2007, the Company granted restricted stock units to certain of its non-executive employees. During the year ended December 31, 2008, the Company began granting restricted stock units exclusively to its employees, including executives, in lieu of stock options. Each unit is not considered issued and outstanding and does not have voting rights until it is converted into one share of the Company's common stock upon vesting. Restricted stock unit activity is summarized as follows:

| | Number of shares outstanding | Weighted- average grant date fair value per share |
|---|------------------------------------|---|
| Restricted stock units outstanding, December 31, 2006 | — | \$ — |
| Restricted stock units granted | 364,136 | 77.57 |
| Restricted stock units vested | (47,734) | 76.65 |
| Restricted stock units canceled | — | — |
| Restricted stock units outstanding, December 31, 2007 | 316,402 | 77.79 |
| Restricted stock units granted | 606,737 | 76.37 |
| Restricted stock units vested | (170,309) | 80.38 |
| Restricted stock units canceled | (53,875) | 84.14 |
| Restricted stock units outstanding, December 31, 2008 | 698,955 | 75.46 |
| Restricted stock units granted | 884,318 | 55.96 |
| Restricted stock units vested | (308,459) | 72.85 |
| Restricted stock units canceled | (51,262) | 71.83 |
| Restricted stock units outstanding, December 31, 2009 | <u>1,223,552</u> | 62.18 |

Total fair value of restricted shares and restricted stock units vested during the years ended December 31, 2009, 2008 and 2007 was \$32,712,000, \$26,153,000 and \$10,039,000, respectively.

Fair Value Calculations—Restricted Shares and Restricted Stock Units

The Company used a Monte Carlo simulation option-pricing model to determine the fair value of restricted shares and restricted stock units that have both a service and market price condition with the following weighted average assumptions for the years ended December 31:

| | 2008 | 2007 |
|-------------------------|-------|-------|
| Dividend yield | 0% | 0% |
| Expected volatility | 61% | 65% |
| Risk-free interest rate | 3.74% | 4.56% |

Commencing February 2008, the Company ceased granting restricted shares and restricted stock units with a market price condition. The Company uses fair value of its common stock traded in the market on the date of the grant to determine the fair value of restricted shares and restricted stock units that have a service condition only or have both a service and performance condition.

Employee Stock Purchase Plans

In June 2004, the Company's stockholders approved the adoption of the 2004 Employee Stock Purchase Plan and International Employee Stock Purchase Plan (the "2004 Purchase Plans") as successor plans to a

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

previous plan that ceased activity in 2005. A total of 500,000 shares have been reserved for issuance under the 2004 Purchase Plans, and the number of shares available for issuance under the 2004 Purchase Plans automatically increases on January 1 each year, beginning in 2005, by the lesser of 2% of the shares of common stock then outstanding or 500,000 shares. As of December 31, 2009, a total of 2,268,580 shares remained available for purchase under the 2004 Purchase Plans. The 2004 Purchase Plans permit eligible employees to purchase common stock on favorable terms via payroll deductions of up to 15% of the employee's cash compensation, subject to certain share and statutory dollar limits. Two overlapping offering periods commence during each calendar year, on each February 15 and August 15 or such other periods or dates as determined by the Compensation Committee from time to time, and the offering periods last up to 24 months with a purchase date every six months. The price of each share purchased is 85% of the lower of a) the fair value per share of common stock on the last trading day before the commencement of the applicable offering period or b) the fair value per share of common stock on the purchase date. The 2004 Purchase Plans are administered by the Compensation Committee of the Board of Directors, and such plans will terminate automatically in June 2014 unless a) the 2004 Purchase Plans are extended by the Board of Directors and b) the extension is approved within 12 months by the Company's stockholders.

For the years ended December 31, 2009, 2008 and 2007, 151,863, 119,354 and 120,787 shares, respectively, were issued under the 2004 Purchase Plans at a weighted average purchase price of \$43.57, \$52.92 and \$39.50 per share, respectively.

Fair Value Calculations—Employee Stock Purchase Plans

The Company uses the Black-Scholes option-pricing model to determine the fair value of shares purchased under the 2004 Purchase Plans with the following weighted average assumptions for the years ended December 31:

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|--------------------------|-------------|-------------|-------------|
| Dividend yield | 0% | 0% | 0% |
| Expected volatility | 48% | 59% | 41% |
| Risk-free interest rate | 2.70% | 3.57% | 4.60% |
| Expected life (in years) | 1.25 | 1.25 | 1.25 |

The weighted-average fair value per share of shares purchased on the date of purchase was \$29.17, \$26.34 and \$21.02, respectively, for the years ended December 31, 2009, 2008 and 2007.

Stock-Based Compensation Recognized in the Consolidated Statement of Operations

The following table presents, by operating expense, the Company's stock-based compensation expense recognized in the Company's consolidated statement of operations for the three years ended December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|----------------------------|------------------|------------------|------------------|
| Cost of revenues | \$ 5,908 | \$ 4,641 | \$ 4,128 |
| Sales and marketing | 10,329 | 10,637 | 8,925 |
| General and administrative | 36,819 | 39,807 | 29,678 |
| | <u>\$ 53,056</u> | <u>\$ 55,085</u> | <u>\$ 42,731</u> |

During the year ended December 31, 2008, the Company entered into agreements with its two senior officers in Europe in connection with their resignations and modified their outstanding stock awards. As a result,

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

the Company recorded an incremental stock-based compensation charge of \$3,098,000, which is included in general and administrative expenses in the Company's accompanying consolidated statements of operations for the year ended December 31, 2008.

During the years ended December 31, 2009, 2008 and 2007, the Company capitalized \$747,000, \$574,000 and \$126,000, respectively, of stock-based compensation expense as construction in progress in property, plant and equipment.

The Company's stock-based compensation recognized in the consolidated statement of operations was comprised of the following types of equity awards for the years ended December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|--|------------------|------------------|------------------|
| Stock options | \$ 16,008 | \$ 19,873 | \$ 22,306 |
| Restricted shares and restricted stock units | 30,479 | 31,899 | 17,720 |
| Employee stock purchase plans | 6,569 | 3,313 | 2,705 |
| | <u>\$ 53,056</u> | <u>\$ 55,085</u> | <u>\$ 42,731</u> |

As of December 31, 2009, the total stock-based compensation cost related to unvested equity awards not yet recognized, net of estimated forfeitures, totaled \$76,337,000, which is expected to be recognized over a weighted-average period of 2.21 years.

13. Income Taxes

Income or loss before income taxes is attributable to the following geographic locations for the years ended December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|-----------------------------------|------------------|-----------------|------------------|
| United States | \$ 69,343 | \$23,309 | \$(7,083) |
| Foreign | 39,685 | (3,004) | (2,335) |
| Income (loss) before income taxes | <u>\$109,028</u> | <u>\$20,305</u> | <u>\$(9,418)</u> |

The provision for income tax consisted of the following components for the years ended December 31 (in thousands).

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|--------------------------------------|--------------------|-----------------|----------------|
| Current: | | | |
| Federal | \$ (152) | \$ — | \$ — |
| State | (3,010) | (517) | (61) |
| Foreign | (8,957) | (1,302) | (107) |
| Subtotal | <u>(12,119)</u> | <u>(1,819)</u> | <u>(168)</u> |
| Deferred: | | | |
| Federal | (30,288) | 73,944 | — |
| State | (1,957) | 11,134 | — |
| Foreign | 4,767 | 4,360 | (305) |
| Subtotal | <u>(27,478)</u> | <u>89,438</u> | <u>(305)</u> |
| Benefit (provision) for income taxes | <u>\$ (39,597)</u> | <u>\$87,619</u> | <u>\$(473)</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

State and foreign taxes not based on income are included in general and administrative expenses and the aggregated amount is insignificant for the fiscal years ended December 31, 2009, 2008 and 2007.

The fiscal 2009, 2008 and 2007 income tax benefit (expense) differed from the amounts computed by applying the U.S. federal income tax rate of 35% to pre-tax income (loss) as a result of the following for the years ended December 31 (in thousands):

| | 2009 | 2008 | 2007 |
|---|-------------------|------------------|-----------------|
| Federal tax at statutory rate | \$(38,160) | \$ (7,107) | \$ 3,296 |
| State taxes | (4,967) | (702) | (61) |
| Deferred tax assets generated in current year not benefited | (6,028) | (5,036) | (3,408) |
| Meals and entertainment | (76) | (74) | (54) |
| Stock option deduction | (2,758) | (672) | (456) |
| Change in valuation allowance | 8,830 | 101,563 | 1,475 |
| Disallowed executives' compensation | (493) | (1,032) | (861) |
| Effect of tax settlement and rate change | — | (526) | (924) |
| Uncertain tax positions | (15) | (286) | — |
| Foreign rate differential | 4,830 | 1,518 | — |
| Other, net | (760) | (27) | 520 |
| Total tax benefit (expense) | <u>\$(39,597)</u> | <u>\$ 87,619</u> | <u>\$ (473)</u> |

The Company has not provided for U.S. federal income and foreign withholding taxes on the undistributed earnings from non-U.S. operations as of December 31, 2009 because the Company intends to reinvest the earnings outside the U.S. for an indefinite period of time. If the Company were to distribute these earnings to the U.S. in the form of dividends or otherwise, the Company could be subject to both U.S. income taxes and foreign withholding taxes. Determination of the amount of unrecognized deferred tax liability related to these earnings is not practicable.

The types of temporary differences that give rise to significant portions of the Company's deferred tax assets and liabilities are set out below as of December 31 (in thousands):

| | 2009 | 2008 |
|----------------------------------|------------------|------------------|
| Deferred tax assets: | | |
| Depreciation and amortization | \$ 15,474 | \$ 60,983 |
| Reserves | 32,820 | 22,765 |
| Charitable contributions | 73 | 73 |
| Stock-based compensation | 17,147 | 17,396 |
| Unrealized (gain) loss | 3,549 | 6,070 |
| State tax | 870 | 245 |
| Net operating losses and credits | 54,540 | 61,589 |
| Gross deferred tax assets | 124,473 | 169,121 |
| Valuation allowance | (34,364) | (40,274) |
| Total deferred tax assets | <u>90,109</u> | <u>128,847</u> |
| Deferred tax liabilities: | | |
| Debt discount | (32,526) | (16,838) |
| Fixed assets fair value step-up | (16,765) | (13,656) |
| Intangibles | (15,576) | (16,614) |
| Total deferred tax liabilities | <u>(64,867)</u> | <u>(47,108)</u> |
| Net deferred tax assets | <u>\$ 25,242</u> | <u>\$ 81,739</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The \$25,242,000 of deferred tax assets as of December 31, 2009 are attributable to the Company's operations in the United States, Australia, Hong Kong, Singapore and certain entities in Europe. The \$81,739,000 of deferred tax assets as of December 31, 2008 are attributable to the Company's operations in the United States, Australia, Singapore and certain entities in Europe.

As a result of the IXEurope Acquisition and Virtu Acquisition, the Company recognized deferred tax liabilities in a number of European jurisdictions attributable to the identifiable intangibles and fixed assets' fair value step-ups related to the purchases. The Company's deferred tax liabilities are included in other current liabilities and other liabilities on the accompanying consolidated balance sheets as of December 31, 2009 and 2008.

The Company's accounting for deferred taxes involves weighing positive and negative evidence concerning the realizability of the Company's deferred tax assets in each tax jurisdiction. After considering such evidence as the nature, frequency and severity of current and cumulative financial reporting losses, the sources of future taxable income and available tax planning strategies, management concluded that a 100% valuation allowance was required in certain foreign jurisdictions. A valuation allowance is provided for the deferred tax assets, net of deferred tax liabilities, associated with the Company's operations in certain jurisdictions located in the Company's Asia-Pacific and European regions. The operations in these jurisdictions still have significant recent losses as of the end of 2009. As such, management does not believe these operations have established a sustained history of profitability and therefore the valuation allowance is necessary.

During the year ended December 31, 2009, the Company released the valuation allowances of \$3,119,000 and \$5,196,000, respectively, against the deferred tax assets in Hong Kong and one of its U.K. entities as both entities have been profitable. Upon evaluating the positive and negative evidence, management concluded it was more likely than not that the deferred tax assets will be fully realizable in its operations in both entities.

The Company released the valuation allowance against the deferred tax assets in the U.S. at the end of the fiscal year 2008. In reaching this decision, the Company assessed both the positive and negative evidence, which included the following:

Positive Evidence:

- In the fourth quarter of 2008, the U.S. business achieved three year cumulative profitability. The U.S. profit before tax ("PBT"), as adjusted for permanent tax differences, was positive in 2007 and 2008. In the fourth quarter of 2008, the trailing 12 quarters of U.S. PBT, as adjusted for permanent tax differences, moved from a loss to a profit. Prior to the fourth quarter of 2008 the Company would have had a three year cumulative loss.
- The U.S. business has transitioned from losses to profit as a result of the Company's 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. Once the U.S. business achieved a size sufficient to cover the fixed cost base, incremental revenue will principally contribute to the U.S. PBT. The U.S. business was profitable for every quarter in 2008.
- In 2008, the U.S. business began utilizing its deferred tax assets because of its PBT, as adjusted for permanent items. Additionally, the net operating losses can be carried forward for 20 years and the first year that the federal NOL's begin to expire is 2019. The Company expected that in 2009 and thereafter that the U.S. business would be profitable, even after considering the effects of the financial crisis and credit crunch.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Negative Evidence:

- The U.S. business had no history of annual profitability prior to 2008 since inception. The cumulative losses since inception are significant and the net operating loss carry forwards as of December 31, 2008 for federal purposes were approximately \$148.0 million.
- The Company does not see opportunities in its U.S. business that will allow the Company to implement any tax strategies to accelerate the recognition of taxable income and utilization of the net operating loss carryforwards.

When conducting the quantitative and qualitative analysis of all the positive and negative evidence listed above, the Company gave significant weight to the achievement of three years of cumulative profitability that was achieved in the fourth quarter of 2008, the improving trends for profitability from 2006 to 2008, the nature of the Company's business, and the utilization of the U.S. deferred tax assets in 2008. Therefore the Company concluded that the positive evidence out weighted the negative evidence and that it was more likely than not that the deferred tax assets will be realized.

The Company also released the valuation allowance against the deferred tax assets in Australia at the end of fiscal year 2008 as such operations had been profitable every quarter in the prior three-year period. Upon evaluating the positive and negative evidence, management concluded it was more likely than not that the deferred tax assets will be fully realizable in its operations in Australia. The operations in both the U.S. and Australia generated significant profit during the year ended December 31, 2009.

The Company has not provided a valuation allowance for its operations in Singapore and Switzerland, as management does not believe that a valuation allowance is needed for these two jurisdictions given that both jurisdictions have a history of profitability.

Federal and state tax laws, including California tax laws, impose substantial restrictions on the utilization of net operating loss and credit carryforwards in the event of an "ownership change" for tax purposes, as defined in Section 382 of the Internal Revenue Code. In 2003, the Company conducted an analysis to determine whether an ownership change had occurred due to significant stock transactions in each of the reporting years disclosed at that time. The analysis indicated that an ownership change occurred during the fiscal year 2002, which resulted in an annual limitation of approximately \$819,000 for net operating loss carryforwards generated prior to 2003. Therefore, the Company substantially reduced its federal and state net operating loss carryforwards for the periods prior to 2003 to approximately \$16,400,000. In addition, an ownership change under Section 382 of the Internal Revenue Code was triggered in September 2007 by the issuance of 4,211,939 shares of the Company's common stock. However, the annual limitation associated with this ownership change is not meaningful due to the substantial market capitalization of the Company at the time of the ownership change. While a final determination has not been made, the Company does not expect that a Section 382 ownership change occurred in 2009.

The Company did not pay a significant amount of tax for fiscal year 2009. The tax costs will be primarily limited to foreign income tax for the Company's operations in Europe, federal alternative minimum tax, and state income taxes.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company had net operating loss carryforwards of approximately \$162,180,000 and \$154,148,000, respectively, for federal and state income tax purposes as of December 31, 2009. The net operating loss carryforwards expire, if not utilized, at various intervals from the years 2010 through 2028 as outlined below (in thousands):

| Expiration Date | Net Operating Loss Carry Forwards | |
|-------------------|-----------------------------------|-------------------|
| | Federal | States |
| 2010 to 2012 | \$ — | \$ 12,846 |
| 2013 to 2015 | — | 24,405 |
| 2016 to 2018 | — | 5,283 |
| 2019 to 2021 | 5,500 | 9,228 |
| 2022 to 2024 | 60,731 | 31,798 |
| 2025 to 2027 | 68,395 | 69,441 |
| 2028 & thereafter | 27,554 | 1,147 |
| | <u>\$ 162,180</u> | <u>\$ 154,148</u> |

The Company believes that the state net operating loss carryforwards expiring in the next few years will be utilized in 2010. Approximately \$113,000,000 of the total net operating loss carryforwards is attributable to excess employee stock option deductions, the benefit from which will be credited to additional paid-in capital when subsequently utilized in future years. In addition, the Company's foreign operations had approximately \$123,400,000 of net operating loss carryforwards for local income tax purposes, of which approximately \$33,200,000 expires, if not utilized, at various intervals from the years 2010 through 2018 while the rest of the foreign operating losses can be carried forward indefinitely.

The beginning and ending balances of the Company's unrecognized tax benefits are reconciled below (in thousands):

| | |
|--|-----------------|
| Unrecognized tax benefits as of December 31, 2006 | \$ 1,745 |
| Gross increase related to prior year tax positions | 627 |
| Settlement | (206) |
| Unrecognized tax benefits as of December 31, 2007 | 2,166 |
| Gross increase related to prior year tax positions | 394 |
| Settlement | (1,373) |
| Unrecognized tax benefits as of December 31, 2008 | 1,187 |
| Gross increase related to prior year tax positions | 372 |
| Settlement | — |
| Unrecognized tax benefits as of December 31, 2009 | <u>\$ 1,559</u> |

The unrecognized tax benefits of \$1,559,000 as of December 31, 2009, if subsequently recognized, will affect the Company's effective tax rate favorably at the time when such a benefit is recognized. During fiscal year 2008, the Company reached a final agreement with a state in which it once operated to close an appeal filed by the Company in that state's tax court. The Company filed the appeal in 2006 to contest the decision made by the state auditor disallowing the refundable research and capital goods credits. As a result of the settlement, the total unrecognized tax benefit decreased by \$1,373,000 for the year.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's income tax returns for all tax years remain open to examination by federal and state taxing authorities due to the Company's net operating loss carryforwards. In addition, the Company's tax years of 2003 through 2008 remain open and subject to examination by local tax authorities in certain foreign jurisdictions in which the Company has major operations. There were no income tax audits during the year ended December 31, 2009.

14. Commitments and Contingencies

Operating Lease Commitments

The Company currently leases the majority of its IBX data centers and certain equipment under noncancelable operating lease agreements. The majority of the Company's operating leases for its IBX data centers expire at various dates from 2010 through 2027 with renewal options available to the Company. The 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 IBX data 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.

Minimum future operating lease payments, excluding operating leases covered under restructuring charges (see Note 17), as of December 31, 2009 are summarized as follows (in thousands):

| | |
|---------------------|-------------------|
| Year ending: | |
| 2010 | \$ 66,599 |
| 2011 | 62,395 |
| 2012 | 61,364 |
| 2013 | 62,252 |
| 2014 | 60,403 |
| 2015 and thereafter | 250,428 |
| Total | <u>\$ 563,441</u> |

Total rent expense was approximately \$61,359,000, \$50,366,000 and \$36,224,000 for the years ended December 31, 2009, 2008 and 2007, respectively. Deferred rent, primarily included in other liabilities on the accompanying consolidated balance sheets, was \$34,691,000 and \$28,641,000 as of December 31, 2009 and 2008, respectively.

Other Purchase Commitments

Primarily as a result of the Company's various IBX expansion projects, as of December 31, 2009, the Company was contractually committed for \$151,659,000 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 data centers and make them available to customers for installation. In addition, the Company had numerous other, non-capital purchase commitments in place as of December 31, 2009, such as commitments to purchase power in select locations, primarily in the U.S., Singapore and the United Kingdom, through 2010 and thereafter, and other open purchase orders for goods or services to be delivered or provided during 2010. Such other miscellaneous purchase commitments totaled \$107,186,000 as of December 31, 2009.

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 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 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. 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 \$725.0 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.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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 has been submitted with respect to claims against one defendant and plaintiffs’ renewed request for further leave to amend. The Court has not yet entered a final Order on the motions to dismiss. The Company believes that plaintiffs’ claims and alleged damages are without merit and it intends 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.

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 memorandum of understanding provides that the parties will seek approval of the settlement in Florida state court and that simultaneously, the parties will agree to stay the actions pending in the Delaware Chancery Court and the Florida federal court. The proposed settlement is conditional upon, among other things, the execution of an appropriate stipulation of settlement, 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 we will pay the remainder. The Company intends to continue to defend the action vigorously if the settlement is not finalized.

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 December 31, 2009. The Company and its officers and directors intend to continue to defend the actions vigorously.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Estimated and Contingent Liabilities

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

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues contingent liabilities when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. In the opinion of management, there are no pending claims for which the outcome is expected to result in a material adverse effect in the financial position, results of operations or cash flows of the Company.

Employment Agreements

The Company has entered into a severance agreement with each of its executive officers that provides for a severance payment equal to the executive officer's annual base salary and maximum bonus in the event his or her employment is terminated for any reason other than cause or he or she voluntarily resigns under certain circumstances as described in the agreement. In addition, under the agreement, the executive officer is entitled to the payment of his or her monthly health care premiums under the Consolidated Omnibus Budget Reconciliation Act for up to 12 months. For certain executive officers, these benefits are only triggered after a change-in-control of the Company.

Guarantor Arrangements

As permitted under Delaware law, the Company has agreements whereby the Company indemnifies its officers and directors for certain events or occurrences while the officer or director is, or was serving, at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that limits the Company's exposure and enables the Company to recover a portion of any future amounts paid. As a result of the Company's insurance policy coverage, the Company believes the estimated fair value of these indemnification agreements is minimal. The Company has no liabilities recorded for these agreements as of December 31, 2009.

The Company enters into standard indemnification agreements in the ordinary course of business. Pursuant to these agreements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally the Company's business partners or customers, in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the Company's services. The term of these indemnification agreements is generally perpetual any time after execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the estimated fair value of these agreements is minimal. The Company has no liabilities recorded for these agreements as of December 31, 2009.

The Company enters into arrangements with its business partners, whereby the business partner agrees to provide services as a subcontractor for the Company's implementations. Accordingly, the Company enters into standard indemnification agreements with its customers, whereby the Company indemnifies them for other acts, such as personal property damage, of its subcontractors. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has general and umbrella insurance policies that enable the Company to recover a portion of any amounts paid. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the estimated fair value of these agreements is minimal. The Company has no liabilities recorded for these agreements as of December 31, 2009.

The Company has service level commitment obligations to certain of its customers. As a result, service interruptions or significant equipment damage in the Company's IBX data centers, whether or not within the Company's control, could result in service level commitments to these customers. The Company's liability insurance may not be adequate to cover those expenses. In addition, any loss of services, equipment damage or inability to meet the Company's service level commitment obligations, particularly in the early stage of the Company's development, could reduce the confidence of the Company's customers and could consequently impair the Company's ability to obtain and retain customers, which would adversely affect both the Company's ability to generate revenues and the Company's operating results. The Company generally has the ability to determine such service level credits prior to the associated revenue being recognized. The Company has no significant liabilities in connection with service level credits as of December 31, 2009.

15. Related Party Transactions

The Company has several significant stockholders, and other related parties, that are also customers and/or vendors. For the years ended December 31, 2009, 2008 and 2007, revenues recognized with related parties were \$23,419,000, \$20,361,000 and \$8,396,000, respectively. As of December 31, 2009, 2008 and 2007, accounts receivable with these related parties were \$4,614,000, \$4,921,000 and \$2,128,000, respectively. For the year ended December 31, 2009, 2008 and 2007, costs and services procured with related parties were \$1,128,000, \$1,944,000 and \$1,219,000, respectively. As of December 31, 2009, 2008 and 2007, accounts payable with these related parties were \$34,000, \$85,000 and \$122,000, respectively.

16. Segment Information

While the Company has a single line of business, which is the design, build-out and operation of network-neutral 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.

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company provides the following segment disclosures as follows for the years ended December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> | <u>2007</u> |
|---|------------------------|------------------------|------------------------|
| Total revenues: | | | |
| United States | \$535,489 | \$442,803 | \$ 324,878 |
| Europe | 228,136 | 177,502 | 37,490 |
| Asia-Pacific | 118,884 | 84,375 | 57,074 |
| | <u>\$882,509</u> | <u>\$704,680</u> | <u>\$ 419,442</u> |
| Total depreciation and amortization: | | | |
| United States | \$105,038 | \$ 99,892 | \$ 80,781 |
| Europe | 43,415 | 41,048 | 9,813 |
| Asia-Pacific | 25,077 | 18,107 | 9,509 |
| | <u>\$173,530</u> | <u>\$159,047</u> | <u>\$ 100,103</u> |
| Income (loss) from operations: | | | |
| United States | \$128,168 | \$ 66,202 | \$ 11,510 |
| Europe | 31,202 | 1,442 | (4,034) |
| Asia-Pacific | 21,709 | 5,618 | 2,616 |
| | <u>\$181,079</u> | <u>\$ 73,262</u> | <u>\$ 10,092</u> |
| Capital expenditures: | | | |
| United States | \$186,242 | \$218,698 | \$ 418,677 |
| Europe | 152,576 ⁽¹⁾ | 166,849 ⁽²⁾ | 577,907 ⁽³⁾ |
| Asia-Pacific | 58,900 | 84,726 | 42,574 |
| | <u>\$397,718</u> | <u>\$470,273</u> | <u>\$1,039,158</u> |

- (1) Includes the purchase price for the Upminster Acquisition (see Note 2), net of cash acquired, totaling \$28,176,000.
(2) Includes the purchase price for the Virtu Acquisition (see Note 2), net of cash acquired, totaling \$23,241,000.
(3) Includes the purchase price for the IXEurope Acquisition (see Note 2), net of cash acquired, totaling \$541,792,000.

The Company's long-lived assets are located in the following geographic areas as of December 31 (in thousands):

| | <u>2009</u> | <u>2008</u> |
|---------------|---------------------|---------------------|
| United States | \$ 1,130,637 | \$ 1,043,504 |
| Europe | 493,492 | 309,655 |
| Asia-Pacific | 183,986 | 139,671 |
| | <u>\$ 1,808,115</u> | <u>\$ 1,492,830</u> |

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

| | 2009 | 2008 | 2007 |
|------------------------|-------------------|-------------------|-------------------|
| Colocation | \$ 704,860 | \$ 542,943 | \$ 304,724 |
| Interconnection | 106,894 | 93,739 | 73,111 |
| Managed infrastructure | 29,004 | 29,453 | 20,093 |
| Rental | 1,091 | 1,028 | 1,237 |
| Recurring revenues | 841,849 | 667,163 | 399,165 |
| Non-recurring revenues | 40,660 | 37,517 | 20,277 |
| | <u>\$ 882,509</u> | <u>\$ 704,680</u> | <u>\$ 419,442</u> |

17. Restructuring Charges

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

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

A summary of the movement in the 2004 accrued restructuring charges during the year ended December 31, 2009 is outlined as follows (in thousands):

| | Accrued restructuring charge as of December 31, 2008 | Accretion expense | Restructuring charge adjustments | Cash payments | Accrued restructuring charge as of December 31, 2009 |
|----------------------------|--|----------------------|--|------------------|--|
| Estimated lease exit costs | \$ 13,311 | \$ 432 | \$ (6,053) | \$(1,771) | \$ 5,919 |
| | 13,311 | \$ 432 | \$ (6,053) | \$(1,771) | 5,919 |
| Less current portion | (6,023) | | | | (2,403) |
| | <u>\$ 7,288</u> | | | | <u>\$ 3,876</u> |

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

A summary of the movement in the 2004 accrued restructuring charges during the year ended December 31, 2008 is outlined as follows (in thousands):

| | Accrued restructuring charge as of December 31, 2007 | Accretion expense | Restructuring charge adjustments | Cash payments | Accrued restructuring charge as of December 31, 2008 |
|----------------------------|--|----------------------|--|------------------|--|
| Estimated lease exit costs | \$ 12,140 | \$ 792 | \$ 3,142 | \$ 2,763 | \$ 13,311 |
| | 12,140 | \$ 792 | \$ 3,142 | \$ 2,763 | 13,311 |
| Less current portion | (3,973) | | | | (6,023) |
| | <u>\$ 8,167</u> | | | | <u>\$ 7,288</u> |

A summary of the movement in the 2004 accrued restructuring charges during the year ended December 31, 2007 is outlined as follows (in thousands):

| | Accrued restructuring charge as of December 31, 2006 | Accretion expense | Restructuring charge adjustments | Cash payments | Accrued restructuring charge as of December 31, 2007 |
|----------------------------|--|----------------------|--|------------------|--|
| Estimated lease exit costs | \$ 13,857 | \$ 808 | \$ 407 | \$(2,932) | \$ 12,140 |
| | 13,857 | \$ 808 | \$ 407 | \$(2,932) | 12,140 |
| Less current portion | (3,096) | | | | (3,973) |
| | <u>\$ 10,761</u> | | | | <u>\$ 8,167</u> |

During the year ended December 31, 2009, the Company recorded reductions to the restructuring charges totaling \$6,053,000, of which \$5,833,000 was a reversal of accrued restructuring charges associated with the Los Angeles lease as the Company decided to utilize this space it previously abandoned in order to expand its original Los Angeles IBX data center. During the years ended December 31, 2008 and 2007, the Company recorded additional restructuring charges totaling \$3,142,000 and \$407,000, respectively, as a result of revised sublease assumptions. The Company's excess space in the New York metro area remains abandoned and continues to be an accrued restructuring charge. As the Company currently has no plans to enter into lump sum lease terminations 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 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 December 31, 2009 and 2008. The Company is contractually committed to this excess space lease through 2015.

EQUINIX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's minimum future payments associated with one excess space lease is as follows (in thousands):

| | |
|--|-----------------|
| 2010 | \$ 2,284 |
| 2011 | 2,266 |
| 2012 | 2,455 |
| 2013 | 2,471 |
| 2014 | 2,487 |
| 2015 | <u>1,460</u> |
| | 13,423 |
| Less amount representing estimated sublease income and expense | <u>(6,575)</u> |
| | 6,848 |
| Less amount representing accretion | <u>(929)</u> |
| | 5,919 |
| Less current portion | <u>(2,043)</u> |
| | <u>\$ 3,876</u> |

18. Subsequent Events

On January 1, 2010, pursuant to the provisions of the Company's equity compensation plans (see Note 12), the number of common shares in reserve automatically increased by 2,358,915 shares for the 2000 Equity Incentive Plan, 500,000 shares for the 2004 Purchase Plans and 50,000 shares for the 2000 Director Option Plan.

In January 2010, the Company received an additional distribution of \$3,420,000 from the Reserve (see "Cash, Cash Equivalents and Short-Term and Long-Term Investments" in Note 5). As a result, the Company will record a recovery of other-than-temporary impairment loss in its consolidated statement of operations in the first quarter of 2010.

In January 2010, Switch and Data stockholders voted to approve the Switch and Data Acquisition. Completion of the acquisition remains subject to the expiration or termination of the waiting period imposed by the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended, and the satisfaction or waiver of the other closing conditions.

In February 2010, the Company amended the Bank of America Revolving Credit Line and extended the maturity date to February 2011. The financial covenants remain primarily unchanged with a tangible net worth covenant, a debt service ratio and a senior leverage ratio. In addition, the Bank of America Revolving Credit Line was amended to permit the Company to fund the cash payment portion of the pending Switch and Data Acquisition.

The Company has evaluated subsequent events through February 19, 2010, which is the date the consolidated financial statements were issued, and determined that there are no subsequent events that would impact the Company's condensed consolidated financial statements for the year ended December 31, 2009.

19. Quarterly Financial Information (Unaudited)

The Company believes that period-to-period comparisons of its financial results should not be relied upon as an indication of future performance. The Company's revenues and results of operations have been subject to significant fluctuations, particularly on a quarterly basis, and the Company's revenues and results of operations

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

could fluctuate significantly quarter-to-quarter and year-to-year. Significant quarterly fluctuations in revenues will cause fluctuations in the Company's cash flows and the cash and cash equivalents and accounts receivable accounts on the Company's consolidated balance sheet. Causes of such fluctuations may include the volume and timing of new orders and renewals, the timing of the opening of new IBX data centers, the sales cycle for the Company's services, the introduction of new services, changes in service prices and pricing models, trends in the Internet infrastructure industry, general economic conditions, extraordinary events such as acquisitions or litigation and the occurrence of unexpected events.

The unaudited quarterly financial information presented below has been prepared by the Company and reflects all adjustments, consisting only of normal recurring adjustments, which in the opinion of management are necessary to present fairly the financial position and results of operations for the interim periods presented.

The following table presents selected quarterly information for fiscal 2009 and 2008:

| | <u>First quarter</u> | <u>Second quarter</u> | <u>Third quarter</u> | <u>Fourth quarter</u> |
|----------------------------|---------------------------------------|---------------------------|--------------------------|---------------------------|
| | (in thousands, except per share data) | | | |
| 2009: | | | | |
| Revenues | \$ 199,231 | \$ 213,168 | \$ 227,558 | \$ 242,552 |
| Gross profit | 87,426 | 94,634 | 101,551 | 115,478 |
| Net income | 15,457 | 17,440 | 18,812 | 17,722 ^(a) |
| Basic earnings per share | 0.41 | 0.46 | 0.49 | 0.45 |
| Diluted earnings per share | 0.40 | 0.44 | 0.47 | 0.44 |
| 2008: | | | | |
| Revenues | \$ 158,218 | \$ 172,044 | \$ 183,735 | \$ 190,683 |
| Gross profit | 63,709 | 70,005 | 73,830 | 82,337 |
| Net income | 3,797 | 708 | 5,556 | 97,863 ^(b) |
| Basic earnings per share | 0.10 | 0.02 | 0.15 | 2.61 |
| Diluted earnings per share | 0.10 | 0.02 | 0.15 | 2.33 |

(a) Includes an out-of-period adjustment as more fully described in "Property, Plant and Equipment" in Note 1.

(b) Includes an income tax benefit of \$88,019,000.

\$500,000,000

Equinix, Inc.

% Senior Notes due 2018



E Q U I N I X

PROSPECTUS

FEBRUARY , 2010

Citi
J.P. Morgan

BofA Merrill Lynch
Barclays Capital
Goldman, Sachs & Co.
ING
RBS

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth all expenses, other than the underwriting discounts and commissions, payable by the Registrant in connection with the sale of the securities being registered. All the amounts shown are estimates except for the registration fee.

| | | |
|---|----|---------|
| Securities and Exchange Commission Registration Fee | \$ | * |
| Legal Fees and Expenses | \$ | 375,000 |
| Accounting Fees and Expenses | \$ | 150,000 |
| Trustee Fees | \$ | 20,000 |
| Printing and Engraving Expenses | \$ | — |
| Miscellaneous | \$ | 10,000 |
| Total | \$ | * |

* Omitted because the registration fee is being deferred pursuant to Rule 456(b).

Item 15. Indemnification of Officers and Directors.

Section 145 of the Delaware General Corporation Law authorizes a court to award or a corporation's board of directors to grant indemnification to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act of 1933, as amended (the "Act"). Article VI of the Registrant's Amended and Restated Bylaws provides for mandatory indemnification of its directors and officers and those serving at the Registrant's request as directors, officers, employees or agents of other organizations to the maximum extent permitted by the Delaware General Corporation Law. The Registrant's Amended and Restated Certificate of Incorporation provides that, pursuant to Delaware law, its directors shall not be liable for monetary damages for breach of the directors' fiduciary duty as directors to the Registrant and its stockholders. This provision in the Amended and Restated Certificate of Incorporation does not eliminate the directors' fiduciary duty, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, for actions leading to improper personal benefit to the director, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws. The Registrant has entered into indemnification agreements with its officers and directors. The indemnification agreements provide the Registrant's officers and directors with further indemnification to the maximum extent permitted by the Delaware General Corporation Law. The Registrant maintains liability insurance for its directors and officers.

Item 16. Exhibits.

| <u>Exhibit Number</u> | <u>Exhibit Description</u> |
|-----------------------|--|
| 1.1 | Form of Underwriting Agreement |
| 4.4 | Form of Indenture for Senior Notes due 2018 |
| 4.5 | Form of Senior Note due 2018 (see Exhibit 4.4) |
| 5.1 | Opinion of Davis Polk & Wardwell LLP |

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| <u>Exhibit Number</u> | <u>Exhibit Description</u> |
|-----------------------|--|
| 23.1 | Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm |
| 23.2 | Consent of Davis Polk & Wardwell LLP (included in Exhibit 5.1) |
| 24.1 | Power of Attorney (included on signature page of Registration Statement) |
| 25.1 | Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of U.S. Bank National Association, as Trustee under the Indenture for the Senior Notes due 2018 |

Item 17. Undertakings.

The undersigned Registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (1)(i), (1)(ii) and (1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

2. That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

4. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

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- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

5. That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

6. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

7. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

8. The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Act") in accordance with the rules and regulations prescribed by the Commission under section 305(b)2 of the Act.

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| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---------------------------------|-------------------|
| <u>/S/ IRVING F. LYONS, III</u> Irving F. Lyons, III | Director | February 22, 2010 |
| <u>/S/ CHRISTOPHER B. PAISLEY</u> Christopher B. Paisley | Director | February 22, 2010 |
| <u>/S/ PETER F. VAN CAMP</u> Peter F. Van Camp | Executive Chairman of the Board | February 22, 2010 |

INDEX TO EXHIBITS

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Equinix, Inc.
[•]% Senior Notes due 2018
Underwriting Agreement

New York, New York
February [], 2010

To the Representatives
named in Schedule I
hereto of the several
Underwriters named in
Schedule II hereto

Ladies and Gentlemen:

Equinix, Inc., a corporation organized under the laws of Delaware (the "Company"), proposes to sell to the several underwriters named in Schedule II hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, the principal amount of its securities identified in Schedule I hereto (the "Securities"). The Securities are to be issued under an indenture (the "Indenture") dated as of February [], 2010, between the Company and U.S. Bank National Association, as trustee (the "Trustee"). To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of any Preliminary Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, any Preliminary Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of any Preliminary Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 20 hereof. This Agreement, the Indenture and the Securities are referred to herein collectively as the "Operative Documents."

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Act and has prepared and filed with the Commission an automatic shelf registration statement, as defined in Rule 405. Such Registration Statement, including any amendments thereto filed prior to the Execution Time, became effective upon filing. The Company may have filed with the Commission, as part of an amendment to the Registration Statement or pursuant to Rule 424(b), one or more preliminary prospectus and/or preliminary prospectus supplements relating to the Securities, each of which has previously been furnished to you. The Company will file with the Commission a final prospectus supplement relating to the Securities in accordance with Rule 424(b). As

filed, such final prospectus supplement shall contain all information required by the Act and the rules thereunder, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Preliminary Prospectus used most recently prior to the Execution Time) as the Company has advised you, prior to the Execution Time, will be included or made therein. The Registration Statement, at the Execution Time, meets the requirements set forth in Rule 415(a)(1)(x). The initial Effective Date of the Registration Statement was not earlier than the date three years before the Execution Time.

(b) On each Effective Date, the Registration Statement did, and when the Final Prospectus is first filed in accordance with Rule 424(b) and on the Closing Date (as defined herein), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act, the Exchange Act and the Trust Indenture Act and the respective rules thereunder; on each Effective Date and at the Execution Time, the Registration Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; on the Effective Date and on the Closing Date the Indenture did or will comply in all material respects with the applicable requirements of the Trust Indenture Act and the rules thereunder; and on the date of any filing pursuant to Rule 424(b) and on the Closing Date, the Final Prospectus (together with any supplement thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to (i) that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (ii) the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto), it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(c) (i) The Disclosure Package and (ii) each electronic road show, when taken together as a whole with the Disclosure Package, as of the Execution Time and at the Closing Date, does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(d) (i) At the time of filing the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Sections 13 or 15(d) of the Exchange Act or form of prospectus), (iii) at the time the Company or

any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c)) made any offer relating to the Securities in reliance on the exemption in Rule 163, and (iv) at the Execution Time (with such date being used as the determination date for purposes of this clause (iv)), the Company was or is (as the case may be) a “well-known seasoned issuer” as defined in Rule 405. The Company agrees to pay the fees required by the Commission relating to the Securities within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

(e) (i) At the earliest time after the filing of the Registration Statement that the Company or another offering participant made *abona fide* offer (within the meaning of Rule 164(h)(2)) of the Securities and (ii) as of the Execution Time (with such date being used as the determination date for purposes of this clause (ii)), the Company was not and is not an Ineligible Issuer (as defined in Rule 405), without taking account of any determination by the Commission pursuant to Rule 405 that it is not necessary that the Company be considered an Ineligible Issuer.

(f) Each Issuer Free Writing Prospectus and the final term sheet prepared and filed pursuant to Section 5(b) hereto does not include any information that conflicts with the information contained in the Registration Statement, including any document incorporated by reference therein and any prospectus supplement deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by any Underwriter through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 8 hereof.

(g) The Company has been duly incorporated and is an existing corporation in good standing under the laws of State of Delaware, with power and authority (corporate and other) to own its properties and conduct its business as described in the Disclosure Package and the Final Prospectus; and the Company is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except to the extent that the failure to be so qualified or in good standing in such other jurisdictions would not have a material adverse effect on the condition (financial or other), business, properties or results of operations of the Company and the Subsidiaries (as defined below) taken as a whole (each, a “Company Material Adverse Effect”).

(h) Equinix Operating Co., Inc., Equinix Europe Ltd, Equinix (UK) Ltd, Equinix (Germany) GmbH and Equinix Singapore Pte Ltd (each a “Subsidiary” and, together, the “Subsidiaries”) are the direct and indirect subsidiaries of the Company that are material to the business of the Company and its subsidiaries taken as a whole. Each of the Subsidiaries has been duly organized and is an existing business entity in good standing under the laws of the jurisdiction of its organization, with power and authority (corporate and other) to own its properties and conduct its business as described in the Disclosure Package and the Final Prospectus; and each Subsidiary is duly qualified to do business as a foreign business entity in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification except to the extent that the failure to be so qualified or in good standing would not have a Company Material Adverse Effect; all of the issued and outstanding capital stock or equity interests, as applicable, of each subsidiary of the Company has been duly author-

ized and validly issued and is fully paid and nonassessable. The Company owns all of the shares of capital stock or equity interests, as applicable, of each subsidiary of the Company, directly or through subsidiaries, free from liens, encumbrances and defects, except as pledged pursuant to financing agreements as disclosed in the Disclosure Package and the Final Prospectus. In addition, each of Equinix Group Ltd, Equinix (Services) Ltd, Equinix (Dusseldorf) GmbH, Equinix (France) SAS, Equinix (Real Estate) GmbH, Equinix (Switzerland) AG, Equinix (Holdings) BV, Equinix (London) Ltd, Equinix Paris SAS, Equinix (Services) Switzerland AG, Upminster GmbH, Equinix (IBX Services) GmbH, Equinix (Netherlands) Holding Coöperatie U.A, Equinix (Netherlands) BV, Virtu Secure Web Services BV, Equinix Pacific, Inc., Equinix Pacific Pte Ltd, Equinix Japan KK, Equinix Australia Ltd, Equinix Hong Kong Ltd, Equinix Asia Pacific Pte Ltd, Equinix Singapore Holdings Pte Ltd, SV1 LLC, Equinix RP, Inc., Equinix RP II LLC, CHI 3 LLC, NY3 LLC, CHI 3 Procurement, LLC and LA4 LLC (the "Other Subsidiaries"), individually do not constitute a "significant subsidiary," as defined by Rule 1-02 of Regulation S-X; however, when taken together, do constitute a "significant subsidiary" as defined by Rule 1-02 of Regulation S-X. The Subsidiaries are the only significant subsidiaries of the Company as defined by Rule 1-02 of Regulation S-X, and all subsidiaries (excluding the Subsidiaries and the Other Subsidiaries), when taken together, do not constitute a "significant subsidiary" as defined by Rule 1-02 of Regulation S-X.

(i) Except as disclosed in the Disclosure Package and the Final Prospectus or as have been validly waived, there are no contracts, agreements or understandings involving the Company granting to any person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to the Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act.

(j) The Indenture has been duly authorized, executed and delivered, has been duly qualified under the Trust Indenture Act, and constitutes a legal, valid and binding instrument enforceable against the Company in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, regardless of whether considered in a proceeding in equity or at law); the Securities have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters pursuant to this Agreement, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the Indenture; and the statements set forth under the heading "Description of Notes" in the Preliminary Prospectus and the Final Prospectus, insofar as such statements purport to summarize certain provisions of the Securities and the Indenture, provide a fair summary of such provisions.

(k) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required to be obtained or made by the Company for the consummation of the transactions contemplated by this Agreement and each of the other Operative Documents, except such as have been obtained and made under the Act, the Exchange Act, the Trust Indenture Act, or state securities or blue sky laws in connection with the offer and sale of the Securities by the Underwriters in the manner contemplated herein and in the Disclosure Package and the Final Prospectus.

(l) The execution and delivery by the Company of, and performance by the Company of its obligations under, this Agreement and each of the other Operative Documents, and the consummation of the transactions contemplated herein and therein will not result in a material breach or material violation of any of the terms and provisions of, or constitute a material default under, any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of the Subsidiaries or any of their properties, or any agreement or instrument to which the Company or any such Subsidiary is a party or by which the Company or any such Subsidiary is bound or to which any of the properties of the Company or any such Subsidiary is subject (except a breach or violation that would not have a Material Adverse Effect on the execution and delivery by the Company of, and performance by the Company of its obligations under, this Agreement and each of the other Operative Documents, and the consummation of the transactions contemplated herein and therein), or the charter or by-laws of the Company or any such Subsidiary.

(m) This Agreement has been duly authorized, executed and delivered by the Company.

(n) Except as disclosed in the Disclosure Package and the Final Prospectus, the Company and the Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them; and the Company and its Subsidiaries hold any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them.

(o) The Company and the Subsidiaries possess adequate certificates, authorities or permits issued by appropriate governmental agencies or bodies necessary to conduct the business now operated by them and have not received any notice of proceedings relating to the revocation or modification of any such certificate, authority or permit that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Company Material Adverse Effect.

(p) No labor dispute with the employees of the Company or any of the Subsidiaries exists or, to the knowledge of the Company, is imminent that might have a Company Material Adverse Effect.

(q) The Company and the Subsidiaries own, possess or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, the "Intellectual Property Rights") necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any Intellectual Property Rights that, if determined adversely to the Company or any of the Subsidiaries, would individually or in the aggregate have a Company Material Adverse Effect.

(r) Except as disclosed in the Disclosure Package and the Final Prospectus, neither the Company nor any of the Subsidiaries (A) is in violation of any statute, any rule, regulation,

decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, the "Environmental Laws"), (B) owns leases or operates any real property contaminated with any substance that is subject to any Environmental Laws, (C) is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or (D) is subject to any claim relating to any Environmental Laws, in each case which violation, contamination, liability or claim would individually or in the aggregate have a Company Material Adverse Effect; and the Company is not aware of any pending or threatened investigation which is reasonably expected to lead to such a claim. Except as disclosed in the Disclosure Package and the Final Prospectus, there are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) that might have a Company Material Adverse Effect.

(s) Except as disclosed in the Disclosure Package and the Final Prospectus, there are no pending actions, suits or proceedings against or affecting the Company, any of the Subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its Subsidiaries, would individually or in the aggregate have a Company Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under any Operative Document, or which are otherwise material in the context of the transactions contemplated by any Operative Document; and no such actions, suits or proceedings are threatened or, to the Company's knowledge, contemplated.

(t) The financial statements of the Company and its consolidated subsidiaries included in the Preliminary Prospectus, the Final Prospectus and the Registration Statement present fairly the financial position of the Company and its consolidated subsidiaries as of the dates shown and their consolidated statements of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with the generally accepted accounting principles in the United States applied on a consistent basis and the schedules included in the Registration Statement present fairly the information required to be stated therein. The pro forma financial statements included in the Preliminary Prospectus, the Final Prospectus and the Registration Statement comply as to form in all material respects with the applicable accounting requirements of Regulation S-X under the Act and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements.

(u) Except as disclosed in the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto), since the date of the latest audited financial statements included in the Disclosure Package and the Final Prospectus (i) there has not occurred any Company Material Adverse Effect, or any development or event that would reasonably be expected to involve a prospective Company Material Adverse Effect, and (ii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(v) Neither the Company nor any of the Subsidiaries is currently in breach of, or in default under, any other written agreement or instrument to which it or its property is bound or

affected except to the extent that such breach or default would not have a Company Material Adverse Effect.

(w) The documents incorporated by reference into the Disclosure Package and the Final Prospectus, when they were filed (or, if any amendment with respect to any such document was filed, when such amendment was filed), conformed in all material respects with the requirements of the Exchange Act; and any further such documents incorporated by reference will, when they are filed, conform in all material respects with the requirements of the Exchange Act.

(x) The Company and each of the Subsidiaries is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor any such Subsidiary has any reason to believe, absent a significant change in overall insurance market conditions, that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Company Material Adverse Effect.

(y) PricewaterhouseCoopers LLP who has certified the financial statements and supporting schedules included in the Registration Statement and derived its report with respect thereto, are independent registered public accountants as required by the Act.

(z) The Company and each of the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; the Company and its subsidiaries' internal controls over financial reporting are effective and the Company and its subsidiaries are not aware of any material weakness in their internal controls over financial reporting.

(aa) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its subsidiaries and, to the knowledge of the Company, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(bb) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(cc) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(dd) None of the Company nor any of the Subsidiaries has taken, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities. Except as permitted by the Act, the Company has not distributed any registration statement, preliminary prospectus, prospectus or other offering material in connection with the offering and sale of the Securities.

(ee) The Company is subject to the reporting requirements of either Section 13 or Section 15(d) of the Exchange Act and files reports with the Commission on the Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system.

(ff) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Prospectus, will not be, an “investment company” as defined in the Investment Company Act.

(gg) Except as disclosed in the Disclosure Package and the Final Prospectus, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or other like payment as a result of the transactions contemplated by this Agreement.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. Purchase and Sale. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at the purchase price set forth in Schedule I hereto the principal amount of the Securities set forth opposite such Underwriter’s name in Schedule II hereto.

3. Delivery and Payment. Delivery of and payment for the Securities shall be made on the date and at the time specified in Schedule I hereto or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate,

which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct. Certificates for the Securities shall be registered in such names and in such denominations as Citigroup Global Markets Inc. may request not less than two Business Days in advance of the Closing Date.

The Company agrees to have the Securities available for inspection, checking and packaging by the Representatives in New York, New York, no later than the Business Day prior to the Closing Date.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company and the several Underwriters agree that:

(a) Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or amendment or supplement (including the Final Prospectus or any Preliminary Prospectus) to the latest Preliminary Prospectus used prior to the Execution Time. The Company will cause the Final Prospectus, properly completed, and any amendment or supplement thereto to be filed in a form approved by the Representatives with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly advise the Representatives (i) when the Final Prospectus, and any amendment or supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b), (ii) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, which amendment shall be in a form approved by the Representatives, (iii) of any request by the Commission or its staff for any amendment of the Registration Statement, or for any amendment or supplement to the Final Prospectus or for any additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any notice objecting to its use or the institution or threatening of any proceeding for that purpose and (v) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its reasonable best efforts to prevent the issuance of any such stop order or the occurrence of any such suspension or objection to the use of the Registration Statement and, upon such issuance, occurrence or notice of objection, to obtain as soon as possible the withdrawal of such stop order or relief from such occurrence or objection, including, if necessary, by filing an amendment to the Registration Statement or a new registration statement and using its reasonable best efforts to have such amendment or new registration statement declared effective as soon as practicable.

(b) The Company will prepare a final term sheet, containing solely a description of final terms of the Securities and the offering thereof, in the form approved by you and attached as Schedule IV hereto and file such term sheet pursuant to Rule 433(d) within the time required by such Rule.

(c) If, at any time prior to the filing of the Final Prospectus pursuant to Rule 424(b), any event occurs as a result of which the Disclosure Package would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made or the circumstances then prevailing not misleading, the Company will (i) notify promptly the Representatives so that any use of the Disclosure Package may cease until it is amended or supplemented; (ii) amend or supplement the Disclosure Package in a form approved by the Representatives to correct such statement or omission; and (iii) supply any amendment or supplement to you in such quantities as you may reasonably request.

(d) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made at such time not misleading, or if it shall be necessary to amend the Registration Statement, file a new registration statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, including in connection with use or delivery of the Final Prospectus, the Company promptly will (i) notify the Representatives of any such event, (ii) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 5, an amendment or supplement or new registration statement which will correct such statement or omission or effect such compliance, (iii) use its reasonable best efforts to have any amendment to the Registration Statement or new registration statement declared effective as soon as practicable in order to avoid any disruption in use of the Final Prospectus and (iv) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

(e) As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158.

(f) The Company will furnish to the Representatives and counsel for the Underwriters, without charge, signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172), as many copies of each Preliminary Prospectus, the Final Prospectus and each Issuer Free Writing Prospectus and any supplement thereto as the Representatives may reasonably request.

(g) The Company will arrange, if necessary, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate and will maintain such qualifications in effect so long as required for the distribution of the Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject.

(h) The Company agrees that, unless it has or shall have obtained the prior written consent of the Representatives, and each Underwriter, severally and not jointly, agrees with the Company that, unless it has or shall have obtained, as the case may be, the prior written consent of the Company, it has not made and will not make any offer relating to the Securities that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405) required to be filed by the Company with the Commission or retained by the Company under Rule 433, other than the free writing prospectus containing the information contained in the final term sheet prepared and filed pursuant to Section 5(b) hereto; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto and any electronic road show. Any such free writing prospectus consented to by the Representatives or the Company is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company agrees that (x) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus and (y) it has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(i) The Company will not, without the prior written consent of Citigroup Global Markets Inc. offer, sell, contract to sell, pledge, or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any debt securities issued or guaranteed by the Company pursuant to an indenture; or publicly announce an intention to effect any such transaction, until the 45th day after the Closing Date.

(j) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in, under the Exchange Act or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(k) The Company agrees to pay the costs and expenses relating to the following matters: (i) except as set forth in Section 5(l), the preparation, printing, authentication, issuance and delivery of certificates for the Securities, including any stamp or trans-

fer taxes in connection with the original issuance and sale of the Securities; (ii) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Securities; (iii) the registration of the Securities under the Exchange Act; (iv) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states (including filing fees and the reasonable fees and expenses of counsel for the Underwriters relating to such registration and qualification); (v) the transportation and other expenses incurred by or on behalf of Company representatives (but not the Underwriters) in connection with presentations to prospective purchasers of the Securities; (vi) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company; and (vii) all other costs and expenses incident to the performance by the Company of its obligations hereunder and under each of the other Operative Documents.

(l) The Underwriters agree to pay all out-of-pocket expenses of the Company payable to the financial printer in connection with the offering and the sale of the Securities.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Securities shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Execution Time and the Closing Date, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Final Prospectus, and any supplement thereto, have been filed in the manner and within the time period required by Rule 424(b); the final term sheet contemplated by Section 5(b) hereto and any other material required to be filed by the Company pursuant to Rule 433(d) under the Act shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; and no stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Representatives shall have received such opinions, dated the Closing Date and addressed to the Representatives, of (a) Davis Polk & Wardwell LLP, outside counsel for the Company, to the effect as set forth on Exhibit A hereto, and (b) of Brandi Galvin Morandi, Esq., General Counsel of the Company, to the effect set forth on Exhibit B hereto.

(c) The Representatives shall have received from Cahill Gordon & Reindel LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives, with respect to matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they reasonably request for the purpose of enabling them to pass upon such matters.

(d) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that:

(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement or any notice objecting to its use has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included in the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto), there has been no material adverse effect on the condition (financial or other), business, properties or results of operation of the Company and the Subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto).

(e) The Representatives shall have received from PricewaterhouseCoopers LLP, at the Execution Time and at the Closing Date, "comfort" letters (which may refer to letters previously delivered to one or more of the Representatives), dated respectively as of the Execution Time and as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are an independent registered accounting firm with respect to the Company within the meaning of the Act and the Exchange Act and the respective applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) (PCAOB) substantially in the form of Exhibit D hereto.

(f) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any amendment or supplement thereto), there shall not have been (i) any change or decrease specified in the letters referred to in paragraph (e) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), earnings, business or properties of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Prospectus (exclusive of any amendment or supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering, sale or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof), the Dis-

closure Package and the Final Prospectus (exclusive of any amendment or supplement thereto).

(g) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act) or any notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(h) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of Cahill Gordon & ReindelLLP, counsel for the Underwriters, at 80 Pine Street, New York, New York 10005, on the Closing Date.

7. Reimbursement of Underwriters' Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through Citigroup Global Markets Inc. on demand for all expenses (including fees and disbursements of counsel) that shall have been reasonably incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, the directors, officers, employees and agents of each Underwriter and each person who controls any Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement for the registration of the Securities as originally filed or in any amendment thereof, or in any Preliminary Prospectus or any other preliminary prospectus supplement relating to the Securities, the Final Prospectus, any Is-

suer Free Writing Prospectus or the information contained in the final term sheet required to be prepared and filed pursuant to Section 5(b) hereto, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, except with respect to any such registration statement, in light of the circumstances under which they were made, not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Company acknowledges that the statements set forth (i) in the last paragraph of the cover page regarding delivery of the Securities and, under the heading "Underwriting" or "Plan of Distribution", (ii) the list of Underwriters and their respective participation in the sale of the Securities, (iii) the sentences related to concessions and reallowances (iv) the paragraph related to stabilization, syndicate covering transactions and penalty bids and (v) [the paragraph related to the "qualified independent underwriter"] in any Preliminary Prospectus and the Final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Prospectus, the Final Prospectus or any Issuer Free Writing Prospectus.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall

have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any statement as to or any admission of fault, culpability or failure to act by or on behalf of any indemnified party.

(d) In the event that the indemnity provided in paragraph (a), (b) or (c) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Underwriters severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending the same) (collectively "Losses") to which the Company and one or more of the Underwriters may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Underwriters on the other from the offering of the Securities; provided, however, that in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter hereunder [or Citigroup Global Markets Inc. (the "Independent Underwriter") in its capacity as "qualified independent underwriter" (within the meaning of FINRA Conduct Rule 2720) be responsible for any amount in excess of the compensation received by the Independent Underwriter for acting in such capacity]. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Underwriters severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Underwriters shall be deemed to be equal to the total underwriting discounts and commissions, in each case as set forth on the cover page of the Final Prospectus. [Benefits received by the Independent Underwriter in its capacity as "qualified independent underwriter" shall be deemed to be equal to the compensation received by the Independent Underwriter for acting in such capacity.] Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by

the Company on the one hand or the Underwriters on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Underwriter within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d). The Underwriters' obligations to contribute pursuant to this Section 8 are several in proportion to their respective purchase obligations and not joint.

[(e) Without limitation of and in addition to its obligations under the other paragraphs of this Section 8, the Company agrees to indemnify and hold harmless the Independent Underwriter, its directors, officers, employees and agents and each person who controls Independent Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject, insofar as such losses, claims, damages or liabilities (or action in respect thereof) arise out of or are based upon Independent Underwriter's acting as a "qualified independent underwriter" (within the meaning of FINRA Conduct Rule 2720) in connection with the offering contemplated by this Agreement, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability results from the gross negligence or willful misconduct of the Independent Underwriter.]

9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the principal amount of Securities set forth opposite their names in Schedule II hereto bears to the aggregate principal amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate principal amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate principal amount of Securities set forth in Schedule II hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall determine in order that the

required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such delivery and payment (i) trading in the Company's Common Stock shall have been suspended by the Commission or the NASDAQ Global Select Market or trading in securities generally on the New York Stock Exchange or the NASDAQ Global Market shall have been suspended or limited or minimum prices shall have been established on either of such exchanges, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering, sale or delivery of the Securities as contemplated by any Preliminary Prospectus or the Final Prospectus (exclusive of any amendment or supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or its affiliates or the Company or any of the officers, directors, employees, agents or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, (a) if sent to the Representatives, will be mailed, delivered or telefaxed to the Citigroup Global Markets Inc. General Counsel (fax no.: (212) 816-7912) and confirmed to the General Counsel, Citigroup Global Markets Inc., at 388 Greenwich Street, New York, New York, 10013, Attention: General Counsel; or (b) if sent to the Company, will be mailed, delivered or telefaxed to the Company General Counsel (650) 513-7913 and confirmed to it at 301 Velocity Way, Fifth Floor, Foster City, California 94404, Attention: the Legal Department.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. No fiduciary duty. The Company hereby acknowledges that (a) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company, on the one hand, and the Underwriters and any affiliate through which it may be acting, on the other, (b) the Underwriters are acting as principal and not as an agent or fiduciary of the Company and (c) the Company's engagement of the Underwriters in connection with the offering and the process leading up to the offering is as independent contractors and not in any other capacity. Furthermore, the Company agrees that it is solely responsible for making

its own judgments in connection with the offering (irrespective of whether any of the Underwriters has advised or is currently advising the Company on related or other matters). The Company agrees that it will not claim that the Underwriters have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

16. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

17. Waiver of Jury Trial. The Company hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

18. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

19. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

20. Definitions. The terms that follow, when used in this Agreement, shall have the meanings indicated.

“Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

“Commission” shall mean the Securities and Exchange Commission.

“Disclosure Package” shall mean (i) the Preliminary Prospectus used most recently prior to the Execution Time, (ii) the Issuer Free Writing Prospectuses, if any, identified in Schedule III hereto, (iii) the final term sheet prepared and filed pursuant to Section 5(b) hereto, if any, and (iv) any other Free Writing Prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package.

“Effective Date” shall mean each date and time that the Registration Statement and any post-effective amendment or amendments thereto became or becomes effective.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Execution Time” shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

“Final Prospectus” shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) after the Execution Time and all documents incorporated by reference therein.

“Free Writing Prospectus” shall mean a free writing prospectus, as defined in Rule 405.

“Investment Company Act” shall mean the Investment Company Act of 1940, as amended.

“Issuer Free Writing Prospectus” shall mean an issuer free writing prospectus, as defined in Rule 433.

“Preliminary Prospectus” shall mean any preliminary prospectus and any preliminary prospectus supplement referred to in paragraph 1(a) above which is used prior to the filing of the Final Prospectus and all documents incorporated by reference therein.

“Registration Statement” shall mean the registration statement referred to in paragraph 1(a) above, including exhibits, financial statements, any prospectus supplement relating to the Securities that is filed with the Commission pursuant to Rule 424(b) and deemed part of such registration statement pursuant to Rule 430B, as amended on each Effective Date and, in the event any post-effective amendment thereto becomes effective prior to the Closing Date, shall also mean such registration statement as so amended and, in each case, all documents incorporated by reference therein.

“Rule 158”, “Rule 163”, “Rule 164”, “Rule 172”, “Rule 405”, “Rule 415”, “Rule 424”, “Rule 430B” and “Rule 433” refer to such rules under the Act.

“Trust Indenture Act” shall mean the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Well-Known Seasoned Issuer” shall mean a well-known seasoned issuer, as defined in Rule 405.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

Equinix, Inc.

By: _____
Name:
Title:

The foregoing Agreement is hereby confirmed and accepted as of the date specified in Schedule I hereto.

Citigroup Global Markets Inc.
J.P. Morgan Securities Inc.

By: Citigroup Global Markets Inc.

By: _____
Name:
Title:

By: J.P. Morgan Securities Inc.

By: _____
Name:
Title:

For themselves and the other several Underwriters, if any, named in Schedule II to the foregoing Agreement.

EQUINIX, INC.

[]% Senior Notes due 2018

INDENTURE

[], 2010

U.S. BANK NATIONAL ASSOCIATION

Trustee

CROSS-REFERENCE TABLE*

| <u>Trust Indenture Act Section</u> | <u>Indenture Section</u> |
|--|------------------------------|
| 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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EXHIBITS

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| Exhibit A | FORM OF NOTE FOR []% SENIOR NOTES |
| Exhibit B | FORM OF NOTATIONAL GUARANTEE |

This Indenture, dated as of [], 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 []% 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 [], 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 [], 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 Depository 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.

“*Depository*” 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 Depository with respect to the Notes, and any and all successors thereto appointed as depository 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 \$500.0 million aggregate principal amount of the Company’s []% 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 [], 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 Depository, a Person who has an account with the Depository.

“*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;

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- (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];

(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-77bbb).

“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 [], 2014; *provided, however*, that if the period from the Redemption Date to [], 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.*

| <u>Term</u> | <u>Defined in Section</u> |
|-----------------------------------|---------------------------|
| "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 Depository 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 Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Notes will be exchanged by the Company for Definitive Notes if:

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

(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 Depository 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 Depository, 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 Depository in accordance with the Applicable Procedures directing the Depository 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 Depository in accordance with the Applicable Procedures directing the Depository 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 Depository 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 Depository 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 DEPOSITARY 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. 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 30 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;

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- (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 [], 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 []% 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 [], 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 of the years indicated below:

| <u>Year</u> | <u>Percentage</u> |
|---------------------|-------------------|
| 2014 | []% |
| 2015 | []% |
| 2016 and thereafter | 100.000% |

(d) At any time prior to [], 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, promptly upon 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 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);
- (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 [] beginning with the [] 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 [], 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

With a copy to:

Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
Attention: Alan F. Denenberg

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

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 CONSTRUCT 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 [], 2010

EQUINIX, INC.

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Name:
Title:

[]% Senior Notes due 2018

[Insert the Global Note Legend, if applicable, pursuant to the provisions of the Indenture]

A-1

[Face of Note]

CUSIP_____

[]% 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: [] and []

Record Dates: [] and []

Dated: _____, 20__

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 []% per annum from _____, 20__ until maturity. The Company will pay interest semi-annually in arrears on [] and [] 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 _____, 20__. 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 [] or [] immediately 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, [], 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 [], 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 [], 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 []% 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 [], 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 [] of the years indicated below:

| <u>Year</u> | <u>Percentage</u> |
|---------------------|-------------------|
| 2014 | []% |
| 2015 | []% |
| 2016 and thereafter | 100.000% |

(d) At any time prior to [], 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.

[Address]

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:

| <u>Date of Exchange</u> | <u>Amount of decrease in Principal Amount of this Global Note</u> | <u>Amount of increase in Principal Amount of this Global Note</u> | <u>Principal Amount of this Global Note following such decrease (or increase)</u> | <u>Signature of authorized officer of Trustee or Custodian</u> |
|-------------------------|---|---|---|--|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

* *This schedule should be included only if the Note is issued in global form.*

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 [], 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 []% 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:

| | |
|---------------|-----------|
| New York | Madrid |
| Menlo Park | Tokyo |
| Washington DC | Beijing |
| London | Hong Kong |
| Paris | |



Davis Polk & Wardwell LLP 650 752 2000 tel
1600 El Camino Real 650 752 2111 fax
Menlo Park, CA 94025

February 22, 2010

Equinix, Inc.
301 Velocity Way, Fifth Floor
Foster City, CA 94404

Ladies and Gentlemen:

We have acted as counsel for Equinix, Inc., a Delaware corporation (the “**Company**”), in connection with the Registration Statement on Form S-3 (the “**Registration Statement**”) filed by the Company with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), for the registration of the sale of an indeterminate amount of the Company’s Senior Notes due 2018 (the “**Notes**”), which may be issued pursuant to an indenture between the Company and U.S. Bank National Association, as trustee (the “**Trustee**”) (the “**Indenture**”), substantially in the form filed as Exhibit 4.4 to the Registration Statement.

Certain terms of the Notes will be approved by the Board of Directors of the Company or a committee thereof or certain authorized officers of the Company as part of the corporate action taken and to be taken in connection with the issuance of the Notes. The Notes are to be issued in an underwritten public offering pursuant to an underwriting agreement (the “**Underwriting Agreement**”) to be entered into by the Company and certain underwriters (the “**Underwriters**”).

We, as your counsel, have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. When the Indenture to be entered into in connection with the issuance of the Notes has been duly authorized, executed and delivered by the Trustee and the Company; the specific terms of the Notes have been duly authorized and established; and such Notes have been duly authorized, executed, authenticated, issued and delivered to and paid for by the Underwriters in accordance with the Indenture and the Underwriting Agreement, such Notes will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally, concepts of reasonableness and equitable principles of general applicability.

In connection with the opinions expressed above, we have assumed that, at or prior to the time of the delivery of the Notes, (i) the Board of Directors shall have duly established the terms of such Notes and duly authorized the issuance and sale of the Notes and such authorization shall not have been modified or rescinded; (ii) the Company is, and shall remain, validly existing as a corporation in good standing under the laws of the State of Delaware; (iii) the Registration Statement shall have become effective and such effectiveness shall not have been terminated or rescinded; (iv) the Indenture and the Notes are each valid, binding and enforceable agreements of each party thereto, (other than as expressly covered above in respect of the Company); and (v) there shall not have occurred any change in law affecting the validity or enforceability of the Notes. We have also assumed that none of the terms of the Notes to be established subsequent to the date hereof, nor the issuance and delivery of the Notes, nor the compliance by the Company with the terms of the Notes will violate any applicable law or public policy or will result in a violation of any provision of any instrument or agreement then binding upon the Company, or any restriction imposed by any court or governmental body having jurisdiction over the Company.

We are members of the Bar of the States of New York and California and the foregoing opinion is limited to the laws of the State of New York and the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement referred to above and further consent to the reference to our name under the caption "Legal Matters" in the prospectus, which is a part of the Registration Statement. In giving this consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by or furnished to any other person without our prior written consent.

Very truly yours,

/s/ Davis Polk & Wardwell LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-3 of Equinix, Inc., of our report dated February 22, 2010, relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
San Jose, California
February 22, 2010

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM T-1

**STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE**

Check if an Application to Determine Eligibility of a Trustee Pursuant to Section 305(b)(2)

U.S. BANK NATIONAL ASSOCIATION

(Exact name of Trustee as specified in its charter)

31-0841368

I.R.S. Employer Identification No.

800 Nicollet Mall
Minneapolis, Minnesota
(Address of principal executive offices)

55402
(Zip Code)

Paula Oswald
U.S. Bank National Association
633 W. 5TH Street, 24th Floor
Los Angeles, CA 90071
(213) 615-6043

(Name, address and telephone number of agent for service)

Equinix, Inc.

(Exact name of obligor as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0487526
(I.R.S. Employer
Identification No.)

301 Velocity Way,
Fifth Floor,
Foster City, CA
(Address of Principal Executive Offices)

94404
(Zip Code)

Senior Unsecured Notes
(Title of the Indenture Securities)

FORM T-1

Item 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

- a) *Name and address of each examining or supervising authority to which it is subject.*
Comptroller of the Currency
Washington, D.C.
- b) *Whether it is authorized to exercise corporate trust powers.*
Trustee is authorized to exercise corporate trust powers.

Item 2. AFFILIATIONS WITH OBLIGOR. *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

In answering this item, the trustee has relied, in part, upon information furnished by the obligor and the underwriters, and has also examined its own books and records for the purpose of answering this item.

Items 3-15 *Items 3-15 are not applicable because to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

Item 16. LIST OF EXHIBITS: *List below all exhibits filed as a part of this statement of eligibility and qualification.*

1. A copy of the Articles of Association of the Trustee.*
2. A copy of the certificate of authority of the Trustee to commence business.*
3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.*
4. A copy of the existing bylaws of the Trustee.**
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939, attached hereto as Exhibit 6.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority is annexed hereto as Exhibit 7 and made a part hereof.

* Incorporated by reference to Registration Number 333-128217.
Copies of the Articles of Association of the trustee, as now in effect, a certificate of authority to commence business and a certificate of authority to exercise corporate trust powers are on file with the Securities and Exchange Commission as Exhibits with corresponding exhibit numbers to the Form T-1 of Revlon Consumer Products Corporation, filed pursuant to Section 305(b)(2) of the Trust Indenture Act of 1939, as amended, on November 15, 2005 (Registration No. 333-128217), and are incorporated herein by reference.

** Incorporated by reference to Registration Number 333-159463.
Copies of the existing bylaws of the Trustee, amended March 4, 2009, are on file with the Securities and Exchange Commission as Exhibits with corresponding exhibit numbers to the Form T-1 of Magma Design Automation Inc. filed pursuant to Section 305(b) (2) of the Trust Indenture Act of 1939, as amended, on August 24, 2009, and are incorporated herein by reference.

NOTE

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligors.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Los Angeles, State of California on the 22nd of February, 2010.

U.S. BANK NATIONAL ASSOCIATION

By: /s/ Paula Oswald
Paula Oswald
Vice President

Exhibit 6

CONSENT

In accordance with Section 321(b) of the Trust Indenture Act of 1939, the undersigned, U.S. BANK NATIONAL ASSOCIATION hereby consents that reports of examination of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Dated: February 22, 2010

U.S. BANK NATIONAL ASSOCIATION

By: /s/ Paula Oswald

Paula Oswald

Vice President

Exhibit 7

**U.S. Bank National Association
Statement of Financial Condition
As of 12/31/2009**

(\$000's)

| Assets | |
|--|-----------------------|
| Cash and Due from Depository Institutions | \$ 6,198,904 |
| Federal Reserve Stock | 0 |
| Securities | 43,054,635 |
| Federal Funds | 3,431,853 |
| Loans & Lease Financing Receivables | 189,772,027 |
| Fixed Assets | 3,681,749 |
| Intangible Assets | 13,399,731 |
| Other Assets | 16,837,231 |
| Total Assets | \$ 276,376,130 |
| Liabilities | |
| Deposits | \$ 194,253,182 |
| Fed Funds | 1,328,575 |
| Treasury Demand Notes | 8,820,111 |
| Trading Liabilities | 345,396 |
| Other Borrowed Money | 31,068,244 |
| Acceptances | 0 |
| Subordinated Notes and Debentures | 7,629,967 |
| Other Liabilities | 6,705,043 |
| Total Liabilities | \$ 250,150,518 |
| Equity | |
| Minority Interest in Subsidiaries | \$ 0 |
| Common and Preferred Stock | 18,200 |
| Surplus | 12,642,020 |
| Undivided Profits | 11,935,945 |
| Noncontrolling (minority) interests in consolidated subsidiaries | 1,629,447 |
| Total Equity Capital | \$ 26,225,612 |
| Total Liabilities and Equity Capital | \$ 276,376,130 |