

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

FORM 10-Q

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

For the quarterly period ended June 30, 2020

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 000-31293



**EQUINIX, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State of incorporation)

**77-0487526**

(I.R.S. Employer Identification No.)

**One Lagoon Drive, Redwood City, California 94065**

(Address of principal executive offices, including ZIP code)

**(650) 598-6000**

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001	EQIX	The NASDAQ Stock Market LLC

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

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

The number of shares outstanding of the registrant's Common Stock as of July 30, 2020 was 88,557,118.

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## EQUINIX, INC.

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**PART I - FINANCIAL INFORMATION**
**Item 1. Condensed Consolidated Financial Statements**

**EQUINIX, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share and per share data)

	June 30, 2020	December 31, 2019
	(Unaudited)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 4,785,050	\$ 1,869,577
Short-term investments	22,069	10,362
Accounts receivable, net of allowance for doubtful accounts of \$20,903 and \$13,026	691,589	689,134
Other current assets	330,521	302,880
Assets held for sale	152,188	663
Total current assets	5,981,417	2,872,616
Property, plant and equipment, net	12,663,827	12,152,597
Operating lease right-of-use assets	1,396,101	1,475,367
Goodwill	5,016,350	4,781,858
Intangible assets, net	2,074,689	2,102,389
Other assets	660,246	580,788
Total assets	\$ 27,792,630	\$ 23,965,615
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 745,517	\$ 760,718
Accrued property, plant and equipment	335,013	301,535
Current portion of operating lease liabilities	139,833	145,606
Current portion of finance lease liabilities	102,416	75,239
Current portion of mortgage and loans payable	75,589	77,603
Current portion of senior notes	2,227,768	643,224
Other current liabilities	229,635	153,938
Total current liabilities	3,855,771	2,157,863
Operating lease liabilities, less current portion	1,243,362	1,315,656
Finance lease liabilities, less current portion	1,658,432	1,430,882
Mortgage and loans payable, less current portion	1,218,049	1,289,434
Senior notes, less current portion	8,804,633	8,309,673
Other liabilities	624,125	621,725
Total liabilities	17,404,372	15,125,233
Commitments and contingencies (Note 11)		
Equinix stockholders' equity		
Common stock, \$0.001 par value per share: 300,000,000 shares authorized; 88,890,679 issued and 88,549,394 outstanding in 2020 and 85,700,953 issued and 85,308,386 outstanding in 2019	89	86
Additional paid-in capital	14,651,944	12,696,433
Treasury stock, at cost; 341,285 shares in 2020 and 392,567 shares in 2019	(127,042)	(144,256)
Accumulated dividends	(4,639,041)	(4,168,469)
Accumulated other comprehensive loss	(1,140,291)	(934,613)
Retained earnings	1,642,621	1,391,425
Total Equinix stockholders' equity	10,388,280	8,840,606
Non-controlling interests	(22)	(224)
Total stockholders' equity	10,388,258	8,840,382
Total liabilities and stockholders' equity	\$ 27,792,630	\$ 23,965,615

See accompanying notes to condensed consolidated financial statements.

**EQUINIX, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(Unaudited)			
Revenues	\$ 1,470,121	\$ 1,384,977	\$ 2,914,663	\$ 2,748,195
Costs and operating expenses:				
Cost of revenues	739,344	698,179	1,475,626	1,380,209
Sales and marketing	178,124	159,201	358,574	328,916
General and administrative	256,890	232,656	518,487	447,702
Transaction costs	13,617	2,774	25,147	5,245
Impairment charges	—	386	—	14,834
(Gain) loss on asset sales	(342)	—	857	—
Total costs and operating expenses	1,187,633	1,093,196	2,378,691	2,176,906
Income from operations	282,488	291,781	535,972	571,289
Interest income	1,685	7,762	5,958	11,964
Interest expense	(108,480)	(120,547)	(215,818)	(243,393)
Other income	4,278	12,180	9,448	12,014
Loss on debt extinguishment	(1,868)	—	(8,309)	(382)
Income before income taxes	178,103	191,176	327,251	351,492
Income tax expense	(44,753)	(47,324)	(74,944)	(89,893)
Net income	133,350	143,852	252,307	261,599
Net (income) loss attributable to non-controlling interests	(46)	(325)	(211)	6
Net income attributable to Equinix	\$ 133,304	\$ 143,527	\$ 252,096	\$ 261,605
Earnings per share ("EPS") attributable to Equinix:				
Basic EPS	\$ 1.53	\$ 1.70	\$ 2.92	\$ 3.15
Weighted-average shares for basic EPS	87,303	84,399	86,427	83,114
Diluted EPS	\$ 1.52	\$ 1.69	\$ 2.90	\$ 3.13
Weighted-average shares for diluted EPS	87,901	84,767	87,065	83,471

See accompanying notes to condensed consolidated financial statements.

**EQUINIX, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
(in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
	(Unaudited)			
Net income	\$ 133,350	\$ 143,852	\$ 252,307	\$ 261,599
Other comprehensive income (loss), net of tax:				
Foreign currency translation adjustment ("CTA") gain (loss), net of tax effects of \$0, \$(585), \$0 and \$(595)	181,286	25,127	(232,506)	(56,592)
Net investment hedge CTA gain (loss), net of tax effect of \$0, \$0, \$0, and \$10	(97,058)	(37,857)	47,888	38,993
Unrealized gain (loss) on cash flow hedges, net of tax effects of \$4,772, \$650, \$(1,595) and \$(2,091)	(17,868)	(3,355)	(21,124)	4,869
Net actuarial gain (loss) on defined benefit plans, net of tax effects of \$(6), \$2, \$3 and \$1	20	(7)	55	(18)
Total other comprehensive income (loss), net of tax	66,380	(16,092)	(205,687)	(12,748)
Comprehensive income, net of tax	199,730	127,760	46,620	248,851
Net (income) loss attributable to non-controlling interests	(46)	(325)	(211)	6
Other comprehensive (income) loss attributable to non-controlling interests	(2)	14	9	7
Comprehensive income attributable to Equinix	<u>\$ 199,682</u>	<u>\$ 127,449</u>	<u>\$ 46,418</u>	<u>\$ 248,864</u>

See accompanying notes to condensed consolidated financial statements.

**EQUINIX, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Six Months Ended June 30,	
	2020	2019
(Unaudited)		
Cash flows from operating activities:		
Net income	\$ 252,307	\$ 261,599
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	586,609	533,650
Stock-based compensation	140,343	110,542
Amortization of intangible assets	97,853	98,752
Amortization of debt issuance costs and debt discounts and premiums	7,904	6,233
Provision for allowance for doubtful accounts	11,496	7,097
Impairment charges	—	14,834
Loss on asset sales	857	—
Loss on debt extinguishment	8,309	382
Other items	10,654	8,725
Changes in operating assets and liabilities:		
Accounts receivable	(14,233)	(126,720)
Income taxes, net	11,861	30,662
Other assets	(60,019)	(5,724)
Operating lease right-of-use assets	76,292	78,483
Operating lease liabilities	(72,091)	(73,805)
Accounts payable and accrued expenses	(25,564)	(3,987)
Other liabilities	58,938	23,341
Net cash provided by operating activities	<u>1,091,516</u>	<u>964,064</u>
Cash flows from investing activities:		
Purchases of investments	(52,415)	(20,787)
Sales of investments	12,134	8,945
Business acquisitions, net of cash and restricted cash acquired	(478,248)	(34,143)
Purchases of real estate	(82,567)	(47,436)
Purchases of other property, plant and equipment	(882,889)	(808,138)
Net cash used in investing activities	<u>(1,483,985)</u>	<u>(901,559)</u>
Cash flows from financing activities:		
Proceeds from employee equity awards	30,391	27,593
Payment of dividends and special distribution	(469,487)	(413,052)
Proceeds from public offering of common stock, net of issuance costs	1,784,898	1,561,555
Proceeds from senior notes, net of debt discounts	2,585,736	—
Proceeds from mortgage and loans payable	750,790	—
Repayments of finance lease liabilities	(42,681)	(43,112)
Repayments of mortgage and loans payable	(789,178)	(36,212)
Repayment of senior notes	(493,711)	(150,000)
Debt extinguishment costs	(4,619)	—
Debt issuance costs	(26,266)	—
Net cash provided by financing activities	<u>3,325,873</u>	<u>946,772</u>
Effect of foreign currency exchange rates on cash, cash equivalents and restricted cash	(12,876)	411
Net increase in cash, cash equivalents and restricted cash	2,920,528	1,009,688
Cash, cash equivalents and restricted cash at beginning of period	1,886,613	627,604
Cash, cash equivalents and restricted cash at end of period	<u>\$ 4,807,141</u>	<u>\$ 1,637,292</u>
Cash and cash equivalents		
	\$ 4,785,050	\$ 1,613,529
Current portion of restricted cash included in other current assets	13,293	13,673
Non-current portion of restricted cash included in other assets	8,798	10,090
Total cash, cash equivalents, and restricted cash shown in the condensed consolidated statement of cash flows	<u>\$ 4,807,141</u>	<u>\$ 1,637,292</u>

See accompanying notes to condensed consolidated financial statements.

**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**1. Basis of Presentation and Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited condensed consolidated financial statements have been prepared by Equinix, Inc. ("Equinix" or the "Company") and reflect all adjustments, consisting only of normal recurring adjustments, which in the opinion of management are necessary to fairly state the financial position and the results of operations for the interim periods presented. The condensed consolidated balance sheet data as of December 31, 2019 has been derived from audited consolidated financial statements as of that date. The condensed consolidated financial statements have been prepared in accordance with the regulations of the Securities and Exchange Commission ("SEC"), but omit certain information and footnote disclosure necessary to present the statements in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). For further information, refer to the Consolidated Financial Statements and Notes thereto included in Equinix's Form 10-K as filed with the SEC on February 21, 2020. Results for the interim periods are not necessarily indicative of results for the entire fiscal year.

***Consolidation***

The accompanying unaudited condensed consolidated financial statements include the accounts of Equinix and its subsidiaries, including the acquisitions of Packet Host, Inc. from March 2, 2020, three data centers in Mexico acquired from Axtel S.A.B. de C.V from January 8, 2020, and Switch Datacenters' AMS1 data center business in Amsterdam, Netherlands from April 18, 2019. All intercompany accounts and transactions have been eliminated in consolidation.

***Income Taxes***

The Company elected to be taxed as a real estate investment trust for U.S. federal income tax purposes ("REIT") beginning with its 2015 taxable year. As a result, the Company may deduct the distributions made to its stockholders from taxable income generated by the Company and its qualified REIT subsidiaries ("QRSs"). The Company's dividends paid deduction generally eliminates the U.S. federal taxable income of the Company and its QRSs, resulting in no U.S. federal income tax due. However, the Company's domestic taxable REIT subsidiaries ("TRSs") are subject to U.S. corporate income taxes on any taxable income generated by them. In addition, the foreign operations of the Company are subject to local income taxes regardless of whether the foreign operations are operated as QRSs or TRSs.

The Company provides for income taxes during interim periods based on the estimated effective tax rate for the year. The effective tax rate is subject to change in the future due to various factors such as the operating performance of the Company, tax law changes and future business acquisitions.

The Company's effective tax rates were 22.9% and 25.6% for the six months ended June 30, 2020 and 2019, respectively.

***Coronavirus (COVID-19) Update***

In December 2019, a novel strain of coronavirus, referred to as Coronavirus disease 2019, or COVID-19, emerged. On February 29, 2020, the World Health Organization ("WHO") raised the COVID-19 threat from high to very high, and on March 11, 2020, the WHO characterized COVID-19 as a global pandemic.

During the six months ended June 30, 2020, the COVID-19 pandemic did not have a material impact on the Company's financial statements. The Company recorded an insignificant amount of revenue reserve related to COVID-19 and experienced some decline in non-recurring revenue from Smart Hands services, as the Company waived fees from affected customers in certain circumstances. The Company has seen a modest but mixed impact from COVID-19 to its operating costs. The Company incurred one-time cash bonuses and compensation expense of \$8.6 million for its IBX employees and other employees to support their work-from-home requirements. Additionally, the Company increased its allowance for doubtful accounts for accounts receivable by \$6.3 million during the six months ended June 30, 2020. This is partially offset by lower travel expenses due to travel restrictions imposed due to COVID-19. The Company evaluated its goodwill, long-lived assets, including property, plant and equipment, lease right-of-use assets and intangible assets, noting no indicators of impairment.



**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

The impact that COVID-19 will have on the Company's consolidated financial statements throughout 2020 remains uncertain and ultimately will be dictated by the length and severity of the pandemic, impact on customers and vendors, as well as the economic recovery and federal, state and local government actions taken in response. The Company will continue to evaluate the nature and extent of these potential impacts to its business and consolidated financial statements.

**Recent Accounting Pronouncements**

***Accounting Standards Not Yet Adopted***

In December 2019, Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2019-12, Income Taxes ("Topic 740"): Simplifying the Accounting for Income Taxes. The ASU simplifies accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The ASU also improves consistent application of and simplifies generally accepted accounting principles ("GAAP") for other areas of Topic 740 by clarifying and amending existing guidance. For public entities, the ASU is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted including adoption in any interim period for periods for which financial statements have not yet been issued. The Company is currently evaluating the extent of the impact that the adoption of this standard will have on its condensed consolidated financial statements.

***Accounting Standards Adopted***

In March 2020, FASB issued ASU 2020-04, Reference Rate Reform ("Topic 848"): Facilitation of the Effects of Reference Rate Reform on Financial Reporting. The ASU provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The ASU is effective for all entities as of March 12, 2020 through December 31, 2022. The Company adopted the ASU upon its issuance and there was no impact on the Company's condensed consolidated financial statements for the six months ended June 30, 2020 as a result of adopting this standard. The Company will evaluate its debt, derivative and lease contracts that are eligible for modification relief and may apply the elections prospectively as needed.

In June 2016, FASB issued ASU 2016-13, Financial Instruments - Credit Losses ("Topic 326"): Measurement of Credit Losses on Financial Instruments. The ASU requires the measurement of all expected credit losses for financial assets held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. The ASU requires enhanced qualitative and quantitative disclosures to help investors and other financial statement users better understand significant estimates and judgments used in estimating credit losses, as well as the credit quality and underwriting standards of an organization's portfolio. The ASU is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019, with early adoption permitted. The Company adopted this new ASU on January 1, 2020 using the modified retrospective approach and recorded a net decrease to retained earnings of \$0.9 million and a corresponding increase to allowance for doubtful accounts. The adoption did not have any significant impact on other financial assets within the scope of ASC 326, such as contract asset.

***Accounts Receivable***

Accounts receivables are recorded at invoice amount and are generally due in less than one year. Allowance for doubtful accounts are estimated losses resulting from the inability of customers making payments. An estimate of uncollectible amounts is made based on historical bad debts, age of customer receivable balances, customers' financial conditions, the impact of current and expected future economic conditions, inclusive of the effect of the COVID-19 pandemic on credit losses.

**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

The following table summarizes the activity of the Company's allowance for doubtful accounts (in thousands):

Balance at December 31, 2019	\$ 13,026
Adjustments due to adoption of ASU 2016-13	900
Provision for allowance for doubtful accounts <sup>(1)</sup>	11,496
Net write-offs and recoveries	(4,519)
Balance at June 30, 2020	<u>\$ 20,903</u>

<sup>(1)</sup> During the six months ended June 30, 2020, the Company recorded a provision for allowance for doubtful accounts of \$6.3 million due to the impacts of the COVID-19 pandemic based on available information to date.

## 2. Revenue

### **Contract Balances**

The following table summarizes the opening and closing balances of the Company's accounts receivable, net; contract asset, current; contract asset, non-current; deferred revenue, current; and deferred revenue, non-current (in thousands):

	Accounts receivable, net	Contract asset, current	Contract asset, non-current	Deferred revenue, current	Deferred revenue, non- current
Beginning balances as of January 1, 2020	\$ 689,134	\$ 10,033	\$ 31,521	\$ 76,193	\$ 46,555
Closing balances as of June 30, 2020	691,589	10,688	47,194	84,709	48,140
Increase	<u>\$ 2,455</u>	<u>\$ 655</u>	<u>\$ 15,673</u>	<u>\$ 8,516</u>	<u>\$ 1,585</u>

The difference between the opening and closing balances of the Company's accounts receivable, net, contract assets and deferred revenues primarily results from revenue growth and the timing difference between the satisfaction of the Company's performance obligation and the customer's payment, as well as business combinations closed during the six months ended June 30, 2020. The amounts of revenue recognized during the six months ended June 30, 2020 from the opening deferred revenue balance as of January 1, 2020 was \$56.5 million.

### **Remaining performance obligations**

As of June 30, 2020, approximately \$7.3 billion of total revenues, including deferred installation revenues, are expected to be recognized in future periods, the majority of which will be recognized over the next 24 months. While initial contract terms vary in length, substantially all contracts thereafter automatically renew in one-year increments. Included in the remaining performance obligations is either 1) remaining performance obligations under the initial contract terms or 2) remaining performance obligations related to contracts in the renewal period once the initial terms have lapsed. The remaining performance obligations do not include variable consideration related to unsatisfied performance obligations such as the usage of metered power, service fees from xScale™ data centers, which are calculated based on future events or actual costs incurred in the future, or any contracts that could be terminated without any significant penalties such as the majority of interconnection revenues. The remaining performance obligations above include revenues to be recognized in the future related to arrangements where the Company is considered the lessor.

**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

### 3. Earnings Per Share

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Net income	\$ 133,350	\$ 143,852	\$ 252,307	\$ 261,599
Net (income) loss attributable to non-controlling interests	(46)	(325)	(211)	6
Net income attributable to Equinix	<u>\$ 133,304</u>	<u>\$ 143,527</u>	<u>\$ 252,096</u>	<u>\$ 261,605</u>
Weighted-average shares used to calculate basic EPS	87,303	84,399	86,427	83,114
Effect of dilutive securities:				
Employee equity awards	598	368	638	357
Weighted-average shares used to calculate diluted EPS	<u>87,901</u>	<u>84,767</u>	<u>87,065</u>	<u>83,471</u>
EPS attributable to Equinix:				
Basic EPS	<u>\$ 1.53</u>	<u>\$ 1.70</u>	<u>\$ 2.92</u>	<u>\$ 3.15</u>
Diluted EPS	<u>\$ 1.52</u>	<u>\$ 1.69</u>	<u>\$ 2.90</u>	<u>\$ 3.13</u>

The Company has excluded common stock related to employee equity awards in the diluted EPS calculation above of approximately 31,000 shares and 4,000 shares for the three months ended June 30, 2020 and 2019, respectively, and approximately 23,000 and 54,000 shares for the six months ended June 30, 2020 and 2019, respectively, because their effect would be anti-dilutive.

### 4. Acquisitions

#### 2020 Acquisitions

On March 2, 2020, the Company acquired all outstanding shares and equity awards of Packet Host, Inc. ("Packet"), a leading bare metal automation platform for a total purchase consideration of approximately \$290.3 million in cash. In addition, the Company paid \$16.1 million in cash to accelerate the vesting of unvested Packet equity awards for certain Packet employees, which was recorded as stock-based compensation expense during the three months ended March 31, 2020. In connection with the acquisition, the Company also issued restricted stock awards with an aggregated fair value of \$30.2 million and a three-year vesting period, which will be recognized as stock-based compensation costs over the vesting period. The acquisition, combined with the Company's own organic bare metal service in development, is expected to accelerate Equinix's strategy to help enterprises deploy hybrid multicloud architectures on Equinix's data center platform.

On January 8, 2020, the Company completed the acquisition of three data centers in Mexico from Axtel S.A.B. de C.V. ("Axtel") for a total purchase consideration of approximately \$189.0 million, including \$175.0 million in cash and \$14.0 million the Company paid to the seller for recoverable value-added taxes ("VAT") incurred prior to the acquisition, which related to a corresponding VAT receivable acquired upon acquisition. The acquisition supports the Company's ongoing expansion to meet customer demand in the Americas region.

Both acquisitions constitute a business under the accounting standard for business combinations and, therefore, were accounted for as business combinations using the acquisition method of accounting. Under the acquisition method of accounting, the total purchase price is allocated to the assets acquired and liabilities assumed measured at fair value on the date of acquisition. As of June 30, 2020, the Company had not completed the detailed valuation analysis to derive the fair value of assets acquired and liabilities assumed from either acquisition, including property, plant and equipment, intangible assets and the related tax impacts; therefore, the purchase price allocation is based on provisional estimates and subject to continuing management analysis. During the three months ended June 30, 2020, the Company updated the preliminary allocation of purchase price for the Packet acquisition from the provisional amounts reported as of March 31, 2020. The adjustments made during the three months ended June 30, 2020 primarily resulted in a

**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

decrease in intangible assets and an increase in goodwill of \$5.9 million and \$4.5 million, respectively. The changes in fair value of acquired assets and liabilities assumed did not have a significant impact on the Company's results of operations for any reporting periods prior to June 30, 2020. No purchase price allocation adjustments were made during the three months ended June 30, 2020 for the Axtel acquisition.

A summary of the preliminary allocation of total purchase consideration is presented as follows (in thousands):

	<b>Packet</b>	<b>Axtel</b>
Cash and cash equivalents	\$ 1,068	\$ —
Accounts receivable	5,073	—
Other current assets	117	14,048
Property, plant and equipment	27,945	76,407
Operating lease right-of-use assets	1,519	1,646
Intangible assets	62,700	22,750
Goodwill	227,602	78,902
Other assets	138	—
<b>Total assets acquired</b>	<b>326,162</b>	<b>193,753</b>
Accounts payable and accrued liabilities	(1,001)	(238)
Other current liabilities	(860)	—
Operating lease liabilities	(1,519)	(1,586)
Finance lease liabilities	(27,945)	—
Other liabilities	—	(162)
Deferred tax liabilities	(4,539)	(2,749)
<b>Net assets acquired</b>	<b>\$ 290,298</b>	<b>\$ 189,018</b>

The following table presents certain information on the acquired intangible assets (in thousands):

<b>Intangible Assets</b>	<b>Fair Value</b>	<b>Estimated Useful Lives (Years)</b>	<b>Weighted-average Estimated Useful Lives (Years)</b>
<i>Packet:</i>			
Trade names	\$ 1,600	3.0	3.0
Existing technology	5,100	3.0	3.0
Customer relationships	56,000	10.0	10.0
<i>Axtel:</i>			
Customer relationships	22,750	15.0	15.0

The fair value of the Packet trade name was estimated using the relief from royalty method under the income approach. The Company applied a relief from royalty rate of 1.0% and a discount rate of 8.0%. The fair value of existing technology was estimated under the cost approach by projecting the cost to recreate a new asset with an equivalent utility of the existing technology. The key assumptions of the cost approach include total cost, time to recreate and functional obsolescence.

The fair value of customer relationships acquired from Packet and Axtel was estimated by applying an income approach, by calculating the present value of estimated future operating cash flows generated from existing customers less costs to realize the revenue. The Company applied a discount rate of 8.0% for Packet and 13.3% for Axtel, which reflects the nature of the assets as they relate to the risk and uncertainty of the estimated future operating cash flows, as well as the risk of the country within which the acquired business operates.

The fair value of property, plant and equipment was estimated by applying the cost approach, with the exception of land, which was estimated by applying the market approach. The key assumptions of the cost approach include

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replacement cost new, physical deterioration, functional and economic obsolescence, economic useful life, remaining useful life, age and effective age.

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired and liabilities assumed. Goodwill is attributable to the workforce of the acquired business and the projected revenue increase expected to arise from future customers after the Packet and Axtel acquisitions. Goodwill from both acquisitions is not amortizable for local tax purposes and is attributable to the Company's Americas region.

The Company incurred transaction costs of approximately \$10.5 million during the six months ended June 30, 2020 and an insignificant amount of transaction costs during the three months ended June 30, 2020 for both the Packet and Axtel acquisitions combined. The operating results of both acquisitions are reported in the Americas region following the date of acquisition. During the three months ended June 30, 2020, the Company's results of operations include \$13.3 million of revenues and \$7.0 million of net loss from operations from the combined operations of Packet and Axtel. During the six months ended June 30, 2020, the Company's results of operations include \$21.5 million of revenues and \$20.3 million of net loss from operations from the combined operations of Packet and Axtel. The net loss was primarily attributable to the \$16.1 million stock-based compensation expense incurred to accelerate the vesting of certain Packet employees' unvested Packet equity awards at the close of the Packet acquisition.

*Pending Acquisition of Bell Data Centers (the "Bell Acquisition")*

On May 29, 2020, the Company entered into an agreement to purchase a portfolio of 13 data center sites across Canada from BCE Inc. ("Bell") for approximately \$750.0 million in an all-cash transaction. The Bell Acquisition is expected to close in the fourth quarter of 2020, subject to customary closing conditions including regulatory approval. Upon the close of the acquisition, the operating results of the acquisition will be reported in the Americas region.

**2019 Acquisition**

On April 18, 2019, the Company completed the acquisition of Switch Datacenters' AMS1 data center business in Amsterdam, Netherlands, for a cash purchase price of approximately €30.6 million or approximately \$34.3 million, at the exchange rate in effect on April 18, 2019. As of September 30, 2019, the Company had completed the detailed valuation analysis to derive the fair value of assets acquired and liabilities assumed and updated the final allocation of purchase price.

**5. Assets Held for Sale**

In April 2020, the Company entered into an agreement to form a second joint venture in the form of a limited liability partnership with GIC to develop and operate xScale™ data centers in Asia-Pacific (the "Asia-Pacific Joint Venture"). Upon closing, GIC will contribute cash in exchange for an 80% partnership interest in the Asia-Pacific Joint Venture. The Company has agreed to sell three development sites in Japan, Osaka 2, Tokyo 12, and Tokyo 14, to the Asia-Pacific Joint Venture in exchange for a 20% partnership interest in the Asia-Pacific Joint Venture and cash proceeds. The assets and liabilities of these data center facilities, which are currently included within the Company's Asia-Pacific operating segment, were classified as held for sale as of June 30, 2020. The transaction is expected to close in the fourth quarter of 2020, pending regulatory approval and other closing conditions.

As of June 30, 2020, \$141.2 million of property, plant and equipment, \$11.0 million of other current assets were classified as assets held for sale on the condensed consolidated balance sheet. In addition, \$7.2 million of accrued costs to sell were recorded as transaction costs during the six months ended June 30, 2020 and classified as liabilities held for sale as of June 30, 2020. Liabilities held for sale were included within other current liabilities on the condensed consolidated balance sheet.

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**6. Equity Method Investments**

On October 8, 2019, the Company entered into a joint venture in the form of a limited liability partnership with GIC, Singapore's sovereign wealth fund (the "EMEA Joint Venture"), to develop and operate xScale data centers in Europe. xScale data centers are engineered to meet the technical and operational requirements and price points of core hyperscale workload deployments and also offer access to Equinix's comprehensive suite of interconnection and edge services.

Upon closing, GIC contributed €152.6 million in cash, or \$167.4 million at the exchange rate in effect on October 8, 2019, for an 80% partnership interest in the EMEA Joint Venture. Equinix sold certain xScale data center facilities to the EMEA Joint Venture in exchange for net cash proceeds of \$351.8 million, as well as a 20% partnership interest in the EMEA Joint Venture with a fair value of \$41.9 million. The Company accounts for its investments in the EMEA Joint Venture using the equity method of accounting, whereby the investments were recorded initially at fair value, which equals to the cost of the Company's initial equity contribution, and subsequently adjusted for cash contributions and the Company's share of the income and losses of the investees.

During the three and six months ended June 30, 2020, the Company made additional equity contributions of \$7.6 million and \$12.7 million to the EMEA Joint Venture, respectively. As of June 30, 2020 and December 31, 2019, the Company's equity method investments were \$79.8 million and \$59.7 million, respectively, and were included within other assets on the consolidated balance sheet. The Company's share of income and losses of equity method investments was not significant for the three and six months ended June 30, 2020 and was included in other income on the condensed consolidated statement of operations.

As part of the sale of its xScale data center facilities to the EMEA Joint Venture, the Company also received a contingent consideration upon completion of certain performance milestones. The milestone payments are primarily contingent on the receipt of local regulatory approval for certain sites. The contingent consideration is considered a derivative and is remeasured at its fair value each reporting period using inputs such as probabilities of payment, discount rates, foreign currency forward rates and projected payment dates. The fair value measurements were based on significant inputs that are not observable in the market and thus represent Level 3 measurements. As of June 30, 2020 and December 31, 2019, the fair value of the contingent consideration was \$39.3 million and \$40.1 million, respectively, which was included in other current assets and other assets on the condensed consolidated balance sheet. Changes in the fair value of the contingent consideration were recorded in gain (loss) on asset sales on the condensed consolidated statement of operations.

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**7. Derivatives and Hedging Activities**
**Derivatives Designated as Hedging Instruments**

Net Investment Hedges. The Company is exposed to the impact of foreign exchange rate fluctuations on the value of investments in its foreign subsidiaries whose functional currencies are other than the U.S. Dollar. In order to mitigate the impact of foreign currency exchange rates, the Company has entered into various foreign currency debt obligations, which are designated as hedges against the Company's net investments in foreign subsidiaries. As of June 30, 2020 and December 31, 2019, the total principal amounts of foreign currency debt obligations designated as net investment hedges were \$3,465.7 million and \$4,078.7 million, respectively.

The Company also uses cross-currency interest rate swaps to hedge a portion of its net investment in its European operations. As of June 30, 2020, U.S. Dollar to Euro cross-currency interest rate swap contracts with a total notional amount of \$1,597.0 million were outstanding. As of December 31, 2019, U.S. Dollar to Euro cross-currency interest rate swap contracts with a total notional amount of \$750.0 million were outstanding. At maturity of each outstanding contract, the Company will receive U.S. Dollars from and pay Euros to the contract counterparty. During the term of each contract, the Company receives interest payments in U.S. Dollars and makes interest payments in Euros based on a notional amount and fixed interest rates determined at contract inception.

The effect of net investment hedges on accumulated other comprehensive income and the condensed consolidated statements of operations for the three and six months ended June 30, 2020 and 2019 was as follows (in thousands):

**Amount of gain or (loss) recognized in accumulated other comprehensive income:**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Foreign currency debt	\$ (85,215)	\$ (34,309)	\$ 13,887	\$ 29,606
Cross-currency interest rate swaps (included component) <sup>(1)</sup>	(10,333)	(9,689)	3,807	5,826
Cross-currency interest rate swaps (excluded component) <sup>(2)</sup>	(1,510)	6,141	30,194	3,551
Total	<u>\$ (97,058)</u>	<u>\$ (37,857)</u>	<u>\$ 47,888</u>	<u>\$ 38,983</u>

**Amount of gain or (loss) recognized in earnings:**

	Location of gain or (loss)	Three Months Ended June 30,		Six Months Ended June 30,	
		2020	2019	2020	2019
Cross-currency interest rate swaps (excluded component) <sup>(2)</sup>	Interest expense	\$ 5,459	\$ 4,928	\$ 10,548	\$ 9,091
Total		<u>\$ 5,459</u>	<u>\$ 4,928</u>	<u>\$ 10,548</u>	<u>\$ 9,091</u>

<sup>(1)</sup> Included component represents foreign exchange spot rates.

<sup>(2)</sup> Excluded component represents cross-currency basis spread and interest rates.

Cash Flow Hedges. The Company hedges its foreign currency translation exposure for forecasted revenues and expenses in its EMEA region between the U.S. Dollar and the British Pound, Euro, Swedish Krona and Swiss Franc. The foreign currency forward and option contracts that the Company uses to hedge this exposure are designated as cash flow hedges. As of June 30, 2020 and December 31, 2019, the total notional amounts of these foreign exchange contracts were \$984.8 million and \$824.8 million, respectively. As of June 30, 2020, the Company's foreign exchange contracts had maturity dates ranging from July 2020 to June 2022 and the Company recorded a net gain of \$20.1 million within accumulated other comprehensive income (loss) relating to these foreign exchange contracts that will be reclassified to revenues and expenses as they mature in the next 12 months. As of December 31, 2019, the Company's foreign exchange contracts had maturity dates ranging from January 2020 to December 2021 and the Company recorded a net gain of \$16.3 million within accumulated other comprehensive income (loss) relating to these foreign exchange contracts that will be reclassified to revenues and expenses as they mature in the next 12 months.

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The Company enters into intercompany hedging instruments ("intercompany derivatives") with wholly-owned subsidiaries of the Company in order to hedge certain forecasted revenues and expenses denominated in currencies other than the U.S. Dollar. Simultaneously, the Company enters into derivative contracts with unrelated third parties to externally hedge the net exposure created by such intercompany derivatives.

The Company hedges the interest rate exposure created by anticipated fixed rate debt issuances through the use of treasury locks and forward starting swaps (collectively, interest rate locks), which are designated as cash flow hedges. As of June 30, 2020, the total notional amount of interest rate locks outstanding was \$618.0 million. As of December 31, 2019, the Company had no interest rate locks outstanding. During the six months ended June 30, 2020, interest rate locks with a combined aggregate notional amount of \$1.25 billion were settled related to the issuance of the 2025 Notes, 2027 Notes, 2030 Notes, and 2050 Notes in June 2020 as described in Note 10 below. When interest rate locks are settled, any accumulated gain or loss included as a component of other comprehensive income (loss) are amortized to interest expense over the term of the interest rate locks. As of June 30, 2020, the Company recorded a net loss of \$3.0 million within accumulated other comprehensive income (loss) to be reclassified to interest expense in the next 12 months for interest rate locks. As of December 31, 2019, the net loss and gain in accumulated other comprehensive income (loss) to be reclassified to interest expense in the next 12 months for interest rate locks was not significant.



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The effect of cash flow hedges on accumulated other comprehensive income and the condensed consolidated statements of operations for the three and six months ended June 30, 2020 and 2019 was as follows (in thousands):

**Amount of gain or (loss) recognized in accumulated other comprehensive income:**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Foreign currency forward and option contracts (included component) <sup>(1)</sup>	\$ (22,347)	\$ (2,599)	\$ 5,678	\$ 8,366
Foreign currency option contracts (excluded component) <sup>(2)</sup>	358	(1,405)	1,676	(1,405)
Interest rate locks	(650)	—	(26,882)	—
Total	<u>\$ (22,639)</u>	<u>\$ (4,004)</u>	<u>\$ (19,528)</u>	<u>\$ 6,961</u>

**Amount of gain or (loss) reclassified from accumulated other comprehensive income to income:**

	Location of gain or (loss)	Three Months Ended June 30,		Six Months Ended June 30,	
		2020	2019	2020	2019
Foreign currency forward contracts	Revenues	\$ 20,558	\$ 18,684	\$ 41,777	\$ 28,545
Foreign currency forward contracts	Costs and operating expenses	(10,498)	(9,745)	(21,498)	(15,074)
Interest rate locks	Interest Expense	90	—	258	—
Total		<u>\$ 10,150</u>	<u>\$ 8,939</u>	<u>\$ 20,537</u>	<u>\$ 13,471</u>

**Amount of gain or (loss) excluded from effectiveness testing included in income:**

	Location of gain or (loss)	Three Months Ended June 30,		Six Months Ended June 30,	
		2020	2019	2020	2019
Foreign currency forward contracts	Other income (expense)	\$ —	\$ —	\$ —	\$ 88
Foreign currency option contracts (excluded component) <sup>(2)</sup>	Revenues	(503)	(17)	(1,024)	(17)
Total		<u>\$ (503)</u>	<u>\$ (17)</u>	<u>\$ (1,024)</u>	<u>\$ 71</u>

<sup>(1)</sup> Included component represents foreign exchange spot rates.

<sup>(2)</sup> Excluded component represents option's time value.

**Derivatives Not Designated as Hedging Instruments**

**Embedded Derivatives.** The Company is deemed to have foreign currency forward contracts embedded in certain of the Company's customer agreements that are priced in currencies different from the functional or local currencies of the parties involved. These embedded derivatives are separated from their host contracts and carried on the Company's balance sheet at their fair value. The majority of these embedded derivatives arise as a result of the Company's foreign subsidiaries pricing their customer contracts in U.S. Dollars.

**Economic Hedges of Embedded Derivatives.** The Company uses foreign currency forward contracts to manage the foreign exchange risk associated with the Company's customer agreements that are priced in currencies different from the functional or local currencies of the parties involved ("economic hedges of embedded derivatives"). 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.

**Foreign Currency Forward Contracts.** The Company also uses foreign currency forward contracts to manage the foreign exchange risk associated with certain foreign currency-denominated monetary assets and liabilities. As a result

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of foreign currency fluctuations, the U.S. Dollar equivalent values of its foreign currency-denominated monetary assets and liabilities change. Gains and losses on these contracts are included in other income (expense), on a net basis, along with the foreign currency gains and losses of the related foreign currency-denominated monetary assets and liabilities associated with these foreign currency forward contracts. As of June 30, 2020 and December 31, 2019, the total notional amounts of these foreign currency contracts were \$3.6 billion and \$2.5 billion, respectively.

The following table presents the effect of derivatives not designated as hedging instruments in the Company's condensed consolidated statements of operations (in thousands):

**Amount of gain or (loss) recognized in earnings:**

	Location of gain or (loss)	Three Months Ended June 30,		Six Months Ended June 30,	
		2020	2019	2020	2019
Embedded derivatives	Revenues	\$ (2,741)	\$ (185)	\$ 4,710	\$ 722
Economic hedge of embedded derivatives	Revenues	2,301	598	(5,601)	541
Foreign currency forward contracts	Other income (expense)	(113,016)	10,148	20,808	18,499
<b>Total</b>		<b>\$ (113,456)</b>	<b>\$ 10,561</b>	<b>\$ 19,917</b>	<b>\$ 19,762</b>

**Fair Value of Derivative Instruments**

The following table presents the fair value of derivative instruments recognized in the Company's condensed consolidated balance sheets as of June 30, 2020 and December 31, 2019 (in thousands):

	June 30, 2020		December 31, 2019	
	Assets <sup>(1)</sup>	Liabilities <sup>(2)</sup>	Assets <sup>(1)</sup>	Liabilities <sup>(2)</sup>
<i>Designated as hedging instruments:</i>				
Cash flow hedges				
Foreign currency forward and option contracts	\$ 27,084	\$ 3,896	\$ 24,853	\$ 5,898
Interest rate locks	886	1,583	—	—
Net investment hedges				
Cross-currency interest rate swaps	60,252	—	26,251	—
<i>Total designated as hedging</i>	<b>88,222</b>	<b>5,479</b>	<b>51,104</b>	<b>5,898</b>
<i>Not designated as hedging instruments:</i>				
Embedded derivatives	8,227	1,223	4,595	2,268
Economic hedges of embedded derivatives	1,937	42	1,367	—
Foreign currency forward contracts	990	75,101	641	27,446
<i>Total not designated as hedging</i>	<b>11,154</b>	<b>76,366</b>	<b>6,603</b>	<b>29,714</b>
<b>Total Derivatives</b>	<b>\$ 99,376</b>	<b>\$ 81,845</b>	<b>\$ 57,707</b>	<b>\$ 35,612</b>

<sup>(1)</sup> As presented in the Company's condensed consolidated balance sheets within other current assets and other assets.

<sup>(2)</sup> As presented in the Company's condensed consolidated balance sheets within other current liabilities and other liabilities.

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**Offsetting Derivative Assets and Liabilities**

The Company presents its derivative instruments and the accrued interest related to cross-currency interest rate swaps at gross fair values in the condensed consolidated balance sheets. The Company enters into master netting agreements with its counterparties for transactions other than embedded derivatives to mitigate credit risk exposure to any single counterparty. Master netting agreements allow for individual derivative contracts with a single counterparty to offset in the event of default. For presentation on the condensed consolidated balance sheets, the Company does not offset fair value amounts recognized for derivative instruments or the accrued interest related to cross-currency interest rate swaps under master netting arrangements. The following table presents information related to these offsetting arrangements as of June 30, 2020 and December 31, 2019 (in thousands):

	Gross Amounts Offset in Consolidated Balance Sheet			Gross Amounts not Offset in the Balance Sheet	Net
	Gross Amounts	Gross Amounts Offset in the Balance Sheet	Net Amounts		
<b>June 30, 2020</b>					
Derivative assets	\$ 119,426	\$ —	\$ 119,426	\$ (60,426)	\$ 59,000
Derivative liabilities	92,804	—	92,804	(60,426)	32,378
<b>December 31, 2019</b>					
Derivative assets	\$ 76,640	\$ —	\$ 76,640	\$ (37,820)	\$ 38,820
Derivative liabilities	45,832	—	45,832	(37,820)	8,012

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**8. Fair Value Measurements**

*Valuation Methods*

Fair value estimates are made as of a specific point in time based on methods using the market approach valuation method which uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities 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.

*Cash Equivalents and Investments.* The fair value of the Company's investments in money market funds approximates their face value. Such instruments are included in cash equivalents. The Company's money market funds and publicly traded equity securities are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices for identical instruments in active markets. The fair value of the Company's other investments, including certificates of deposit, approximates their face value. The fair value of these investments is priced based on the quoted market price for similar instruments or nonbinding market prices that are corroborated by observable market data. Such instruments are classified within Level 2 of the fair value hierarchy. The Company determines the fair values of its Level 2 investments by using inputs such as actual trade data, benchmark yields, broker/dealer quotes and other similar data, which are obtained from quoted market prices, custody bank, third-party pricing vendors or other sources. The Company uses such pricing data as the primary input to make its assessments and determinations as to the ultimate valuation of its investment portfolio and has not made, during the periods presented, any material adjustments to such inputs. The Company is responsible for its consolidated financial statements and underlying estimates.

The Company uses the specific identification method in computing realized gains and losses. Realized gains and losses from the sale of investments are included within other income (expense) in the Company's consolidated statements of operations. The Company's investments in publicly traded equity securities are carried at fair value. Unrealized gains and losses on publicly traded equity securities are reported within other income (expense) in the Company's consolidated statements of operations.

*Derivative Assets and Liabilities.* Inputs used for valuations of derivatives are based upon quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant inputs are observable in the market or can be corroborated by observable market data. The significant inputs used include spot currency rates and forward points, interest rate curves, and published credit default swap rates of its foreign exchange trading counterparties and other comparable companies. The Company has determined that the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, therefore the derivatives are categorized as Level 2.

Other than the assets and liabilities that were classified as held for sale as described in Note 5 above, the Company did not have any nonfinancial assets or liabilities measured at fair value on a recurring basis as of June 30, 2020 and December 31, 2019.

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The Company's financial assets and liabilities measured at fair value on a recurring basis as of June 30, 2020 were as follows (in thousands):

	Fair Value at June 30, 2020	Fair Value Measurement Using	
		Level 1	Level 2
<b>Assets:</b>			
Money market and deposit accounts	\$ 2,594,622	\$ 2,594,622	\$ —
Publicly traded equity securities	5,927	5,927	—
Certificates of deposit	16,142	—	16,142
Derivative instruments <sup>(1)</sup>	99,376	—	99,376
Total	<u>\$ 2,716,067</u>	<u>\$ 2,600,549</u>	<u>\$ 115,518</u>
<b>Liabilities:</b>			
Derivative instruments <sup>(1)</sup>	<u>\$ 81,845</u>	<u>\$ —</u>	<u>\$ 81,845</u>

<sup>(1)</sup> Amounts are included within other current assets, other assets, other current liabilities and other liabilities in the Company's accompanying condensed consolidated balance sheet.

The Company's financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2019 were as follows (in thousands):

	Fair Value at December 31, 2019	Fair Value Measurement Using	
		Level 1	Level 2
<b>Assets:</b>			
Money market and deposit accounts	\$ 886,547	\$ 886,547	\$ —
Publicly traded equity securities	2,779	2,779	—
Certificates of deposit	7,583	—	7,583
Derivative instruments <sup>(1)</sup>	57,707	—	57,707
Total	<u>\$ 954,616</u>	<u>\$ 889,326</u>	<u>\$ 65,290</u>
<b>Liabilities:</b>			
Derivative instruments <sup>(1)</sup>	<u>\$ 35,612</u>	<u>\$ —</u>	<u>\$ 35,612</u>

<sup>(1)</sup> Amounts are included within other current assets, other assets, other current liabilities and other liabilities in the Company's accompanying condensed consolidated balance sheet.

The Company did not have any Level 3 financial assets or financial liabilities measured at fair value on a recurring basis as of June 30, 2020 and December 31, 2019.

## 9. Leases

### Significant Lease Transactions

#### Silicon Valley 4 ("SV4") Data Center

In February 2020, the Company exercised its first renewal option available to extend the lease term for the SV4 Data Center for five years. The Company concluded that the two remaining renewal options of five-years each are reasonably certain to be exercised; therefore the concluded lease term is 15 years and 7 months. The lease was previously accounted for as an operating lease. The Company reassessed the lease classification of the SV4 lease and determined the lease should be accounted for as a finance lease. During the three months ended March 31, 2020, the Company recorded finance lease right-of-use ("ROU") asset and liability of \$62.8 million and \$63.3 million, respectively.

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*Hong Kong 1 ("HK1") Data Center*

In March 2020, the Company entered into several lease agreements with the landlord to lease several premises in the HK1 Data Center. One of the premises commenced in March 2020 with an initial term of 18 years. The Company assessed the lease classification of that premises at the commencement date and determined the lease should be accounted for as a finance lease. The Company will assess the remaining premises when the leases commence. During the three months ended March 31, 2020, the Company recorded finance lease ROU asset and liability of \$163.0 million Hong Kong dollars or \$21.0 million at the exchange rate in effect on March 31, 2020.

*Headquarter Office in Redwood City, California ("HQ Office")*

In April 2020, the Company entered into a lease amendment to (i) extend the lease term of the existing space for another 10.5 years and (ii) lease additional space within its HQ Office building, which commenced on June 1, 2020. Both spaces have two five-year renewal options which the Company determined were not reasonably certain to be exercised. Therefore, the concluded lease term for both spaces was approximately 11 years, expiring on March 31, 2031. The existing space was previously accounted for as a finance lease. The Company concluded that the building and land components for both spaces should be accounted for as finance leases and operating leases, respectively. During the three months ended June 30, 2020, the Company recorded incremental finance lease ROU asset and liability of \$42.2 million and operating lease ROU asset and liability of \$8.3 million.

*Singapore 1 ("SG1") Data Center*

In May 2020, the Company exercised a three-year renewal option on the lease of the existing space and entered into a lease agreement to lease additional space in the SG1 Data Center. The building and land were originally accounted for as a finance lease and operating lease, respectively. The Company concluded the remaining five three-year renewal options were reasonably certain to be exercised and therefore, the concluded lease term was 18 years. The Company reassessed the lease classification and determined that the lease should be accounted for as finance lease. Land was determined to not be a component of the lease as the Company no longer controlled substantially all of the economic benefits from its use. The Company recorded incremental finance lease ROU asset and liability of \$99.5 million Singapore dollars, or approximately \$71.4 million, and de-recognized operating lease ROU asset and liability of \$11.4 million Singapore dollars, or approximately \$8.1 million, at the exchange rate in effect on June 30, 2020, during the three months ended June 30, 2020.

*Abu Dhabi 1 ("AD1") Data Center*

In June 2020, the Company entered into two lease agreements to lease additional spaces in the AD1 Data Center. The Company concluded lease terms of both leases are 10 years, including a three-year renewal option for one of the leases. The Company assessed the lease classifications and determined that the leases should be accounted for as finance leases. During the three months ended June 30, 2020, the Company recorded finance lease ROU assets and liabilities of 261.9 million United Arab Emirates Dirham in aggregate, or approximately \$71.3 million at the exchange rate in effect on June 30, 2020.

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**Lease Expenses**

The components of lease expenses are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Finance lease cost				
Amortization of right-of-use assets <sup>(1)</sup>	\$ 28,897	19,811	\$ 54,062	\$ 39,897
Interest on lease liabilities	28,438	27,111	56,263	54,634
Total finance lease cost	57,335	46,922	110,325	94,531
Operating lease cost	52,556	54,920	106,347	106,559
Total lease cost	\$ 109,891	\$ 101,842	\$ 216,672	\$ 201,090

<sup>(1)</sup> Amortization of right-of-use assets is included with depreciation expense, and is recorded within cost of revenues, sales and marketing and general and administrative expenses in the condensed consolidated statements of operations.

**Other Information**

Other information related to leases is as follows (in thousands):

	Six Months Ended June 30, 2020	Six Months Ended June 30, 2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from finance leases	\$ 54,417	\$ 52,701
Operating cash flows from operating leases	102,146	101,875
Financing cash flows from finance leases	42,681	43,112
Right-of-use assets obtained in exchange for lease obligations: <sup>(1)</sup>		
Finance leases	\$ 311,951	\$ 2,597
Operating leases	14,114	77,905
	As of June 30, 2020	As of December 31, 2019
Weighted-average remaining lease term - finance leases <sup>(2)</sup>	15 years	15 years
Weighted-average remaining lease term - operating leases <sup>(2)</sup>	13 years	13 years
Weighted-average discount rate - finance leases	8 %	9 %
Weighted-average discount rate - operating leases	4 %	4 %
Finance lease assets <sup>(3)</sup>	\$ 1,516,351	\$ 1,277,614

<sup>(1)</sup> Represents all non-cash changes in ROU assets.

<sup>(2)</sup> Includes lease renewal options that are reasonably certain to be exercised.

<sup>(3)</sup> As of June 30, 2020 and December 31, 2019, the Company recorded accumulated amortization of finance lease assets of \$528.6 million and \$474.8 million, respectively. Finance lease assets are recorded within property, plant and equipment, net on the condensed consolidated balance sheets.

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**Maturities of Lease Liabilities**

Maturities of lease liabilities as of June 30, 2020 are as follows (in thousands):

	Operating Leases	Finance Leases	Total
2020 (6 months remaining)	\$ 87,527	\$ 95,454	\$ 182,981
2021	192,368	205,435	397,803
2022	184,049	202,461	386,510
2023	168,561	197,071	365,632
2024	156,627	194,842	351,469
Thereafter	1,094,015	1,975,440	3,069,455
Total lease payments	1,883,147	2,870,703	4,753,850
Plus amount representing residual property value	—	17,626	17,626
Less imputed interest	(499,952)	(1,127,481)	(1,627,433)
Total	\$ 1,383,195	\$ 1,760,848	\$ 3,144,043

The Company entered into agreements with various landlords primarily to lease data center spaces and ground leases which have not yet commenced as of June 30, 2020. These leases will commence between fiscal years 2020 and 2022, with lease terms of 1 to 49 years and a total lease commitment of approximately \$705.6 million.

**10. Debt Facilities****Mortgage and Loans Payable**

As of June 30, 2020 and December 31, 2019, the Company's mortgage and loans payable consisted of the following (in thousands):

	June 30, 2020	December 31, 2019
Term loans	\$ 1,218,259	\$ 1,287,151
Mortgage payable and loans payable	77,574	82,967
	1,295,833	1,370,118
Less amount representing unamortized debt discount and debt issuance cost	(3,927)	(4,849)
Add amount representing unamortized mortgage premium	1,732	1,768
	1,293,638	1,367,037
Less current portion	(75,589)	(77,603)
Total	\$ 1,218,049	\$ 1,289,434

*Senior Credit Facility - Revolving Facility*

On December 12, 2017, the Company entered into a credit agreement with a group of lenders for a \$3.0 billion credit facility ("Senior Credit Facility"), comprised of a \$2.0 billion senior unsecured multicurrency revolving credit facility ("Revolving Facility") and an approximately \$1.0 billion senior unsecured multicurrency term loan facility. The Revolving Facility allows the Company to borrow, repay and reborrow over its term. The Revolving Facility provides a sublimit for the issuance of letters of credit of up to \$250.0 million at any one time.

In March 2020, the Company borrowed a total of \$250.0 million under the Revolving Facility, which was fully repaid in May 2020. As of June 30, 2020, the Company had 43 irrevocable letters of credit totaling \$72.4 million issued and outstanding under the Revolving Facility and the amount available to the Company to borrow under the Revolving Facility was approximately \$1.9 billion as of June 30, 2020.

*364-Day Facilities*

On April 15, 2020, the Company entered into a credit agreement which provided for senior unsecured 364-day term loan facilities in an aggregate principal amount of \$750.0 million, comprised of \$500.0 million available to be



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borrowed on the closing date (the "Closing Date Facility") and \$250.0 million available to be borrowed on or prior to July 14, 2020 (the "Delayed Draw Facility" and together with the Closing Date Facility, the "364-Day Facilities"). On April 15, 2020, the Company borrowed \$391.0 million, as well as €100.0 million or \$109.8 million at the exchange rate in effect on that date, under the Closing Date Facility. During the three months ended June 30, 2020, the Company repaid all amounts outstanding under the Closing Date Facility and terminated the 364-Day Facilities. The loss on debt extinguishment incurred in connection with the redemption and termination was not significant.

**Senior Notes**

As of June 30, 2020 and December 31, 2019, the Company's senior notes consisted of the following (in thousands):

	June 30, 2020		December 31, 2019	
	Amount	Effective Rate	Amount	Effective Rate
5.000% Infomart Senior Notes <sup>(1)</sup>	\$ 300,000	4.49%	\$ 450,000	4.46%
5.375% Senior Notes due 2022	—	—%	343,711	5.56%
2.625% Senior Notes due 2024	1,000,000	2.79%	1,000,000	2.79%
2.875% Euro Senior Notes due 2024	842,775	3.08%	841,500	3.08%
2.875% Euro Senior Notes due 2025	1,123,700	3.04%	1,122,000	3.04%
2.900% Senior Notes due 2026	600,000	3.04%	600,000	3.04%
5.875% Senior Notes due 2026	1,100,000	6.03%	1,100,000	6.03%
2.875% Euro Senior Notes due 2026	1,123,700	3.04%	1,122,000	3.04%
5.375% Senior Notes due 2027	1,250,000	5.51%	1,250,000	5.51%
3.200% Senior Notes due 2029	1,200,000	3.30%	1,200,000	3.30%
1.250% Senior Notes due 2025	500,000	1.46%	—	—%
1.800% Senior Notes due 2027	500,000	1.96%	—	—%
2.150% Senior Notes due 2030	1,100,000	2.27%	—	—%
3.000% Senior Notes due 2050	500,000	3.09%	—	—%
	<u>11,140,175</u>		<u>9,029,211</u>	
Less amount representing unamortized debt issuance cost	(108,519)		(78,030)	
Add amount representing unamortized debt premium	745		1,716	
	<u>11,032,401</u>		<u>8,952,897</u>	
Less current portion	(2,227,768)		(643,224)	
Total	<u>\$ 8,804,633</u>		<u>\$ 8,309,673</u>	

<sup>(1)</sup> 5.000% Infomart Senior Notes consist of two tranches outstanding due in each of October 2020 and April 2021. The effective rate represents the weighted-average effective interest rates of the tranches outstanding at the periods presented in the table above.

*Redemption of 5.375% Senior Notes due 2022*

On January 2, 2020, the Company redeemed the remaining \$343.7 million principal amount of the 5.375% Senior Notes due 2022. In connection with the redemption, the Company incurred \$5.9 million of loss on debt extinguishment, including \$4.6 million redemption premium that was paid in cash and \$1.3 million related to the write-off of unamortized debt issuance costs.

*1.250% Senior Notes due 2025, 1.800% Senior Notes due 2027, 2.150% Senior Notes due 2030, and 3.000% Senior Notes due 2050*

On June 22, 2020, the Company issued \$500.0 million aggregate principal amount of 1.250% senior notes due 2025 (the "2025 Notes"), \$500.0 million aggregate principal amount of 1.800% senior notes due 2027 (the "2027 Notes"), \$1.1 billion aggregate principal amount of 2.150% senior notes due 2030 (the "2030 Notes"), and \$500.0 million aggregate principal amount of 3.000% senior notes due 2050 (the "2050 Notes"). Interest on these notes is payable semi-annually on January 15 and July 15 of each year, commencing on January 15, 2021. Debt issuance

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costs and debt discounts related to the 2025 Notes, 2027 Notes, 2030 Notes, and 2050 Notes were \$5.3 million, \$5.6 million, \$12.9 million, and \$14.2 million, respectively.

With a portion of the net cash proceeds from the issuance of the 2025 Notes, 2027 Notes, 2030 Notes, and 2050 Notes as described above, the Company redeemed all outstanding principal amount under its 2.875% Euro Senior Notes due 2024 and 5.875% Senior Notes due 2026 on July 8, 2020. See Note 14 below for further information on the redemption.

***Maturities of Debt Instruments***

The following table sets forth maturities of the Company's debt, including mortgage and loans payable, and senior notes, gross of debt issuance costs, debt discounts and debt premiums, as of June 30, 2020 (in thousands):

Years ending:	
2020 (6 months remaining)	\$ 2,130,697
2021	225,580
2022	1,148,837
2023	6,510
2024	1,006,031
Thereafter	7,920,085
Total	<u>\$ 12,437,740</u>

***Fair Value of Debt Instruments***

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

	June 30, 2020	December 31, 2019
Mortgage and loans payable	\$ 1,304,463	\$ 1,378,429
Senior notes	11,580,351	9,339,497

The fair values of the mortgage and loans payable and 5.000% Infomart Senior Notes, which are not publicly traded, were estimated by considering the Company's credit rating, current rates available to the Company for debt of the same remaining maturities and terms of the debt (Level 2). The fair value of the senior notes, which are traded in the public debt market, was based on quoted market prices (Level 1).

***Interest Charges***

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Interest expense	\$ 108,480	\$ 120,547	\$ 215,818	\$ 243,393
Interest capitalized	6,880	5,910	12,911	15,764
Interest charges incurred	<u>\$ 115,360</u>	<u>\$ 126,457</u>	<u>\$ 228,729</u>	<u>\$ 259,157</u>

Total interest paid in cash, net of capitalized interest, during the three months ended June 30, 2020 and 2019 was \$115.8 million and \$107.4 million, respectively. Total interest paid in cash, net of capitalized interest, during the six months ended June 30, 2020 and 2019 was \$238.6 million and \$243.6 million, respectively.

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## **11. Commitments and Contingencies**

### ***Purchase Commitments***

As a result of the Company's various IBX data center expansion projects, as of June 30, 2020, the Company was contractually committed for approximately \$1.1 billion of unaccrued capital expenditures, primarily for IBX infrastructure 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. The Company also had numerous other, non-capital purchase commitments in place as of June 30, 2020, such as commitments to purchase power in select locations through the remainder of 2020 and thereafter, and other open purchase orders for goods or services to be delivered or provided during the remainder of 2020 and thereafter. Such other miscellaneous purchase commitments totaled approximately \$1.1 billion as of June 30, 2020. In addition, the Company entered into lease agreements in various locations that have not yet commenced as of June 30, 2020. For further information on lease commitments, see Note 9 above.

### ***Equity Contribution Commitments***

In connection with the EMEA Joint Venture closed in October 2019, the Company agreed to make future equity contributions to the EMEA Joint Venture. As of June 30, 2020, the Company had future equity contribution commitments of €12.3 million and £10.3 million, or \$26.5 million in total at the exchange rate in effect on June 30, 2020.

### ***Contingent Liabilities***

The Company estimates exposure on certain liabilities, such as indirect 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, assessed value by the assessor's office, 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.

The Company's indirect and property tax filings in various jurisdictions are subject to examination by local tax authorities. Although we believe that we have adequately assessed and accounted for our potential tax liabilities, and that our tax estimates are reasonable, there can be no certainty that additional taxes will not be due upon audit of our tax returns or as a result of further changes to the tax laws and interpretations thereof. For example, we are currently undergoing audits and appealing the tentative assessments in a number of jurisdictions where we operate, such as Brazil and France. The final results of these audits and the outcomes of the appeals are uncertain and may not be resolved in our favor. The Company regularly assesses the likelihood of adverse outcomes resulting from these examinations and appeals that would affect the adequacy of its tax accruals for each of the reporting periods. If any issues arising from the tax examinations and appeals are resolved in a manner inconsistent with the Company's expectations, the revision of the estimates of the potential or actual liabilities could materially impact the financial position, results of operations, or cash flows of the Company.

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**12. Stockholders' Equity**
**Stockholders' Equity Rollforward**

The following tables provide a rollforward of stockholders' equity for the three and six months ended June 30, 2020 and 2019 (in thousands):

	Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Dividends	AOCI (Loss)	Retained Earnings	Equinix Stockholders' Equity	Non-controlling Interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount							
Balance as of December 31, 2019	85,700,953	\$ 86	(392,567)	\$(144,256)	\$12,696,433	\$(4,168,469)	\$ (934,613)	\$1,391,425	\$ 8,840,606	\$ (224)	\$ 8,840,382
Adjustment from adoption of new accounting standard update	—	—	—	—	—	—	—	(900)	(900)	—	(900)
Net income	—	—	—	—	—	—	—	118,792	118,792	165	118,957
Other comprehensive loss	—	—	—	—	—	—	(272,056)	—	(272,056)	(11)	(272,067)
Issuance of common stock and release of treasury stock for employee equity awards	405,550	—	50,594	16,958	13,432	—	—	—	30,390	—	30,390
Issuance of common stock under ATM Program	162,530	—	—	—	101,791	—	—	—	101,791	—	101,791
Dividend distribution on common stock, \$2.66 per share	—	—	—	—	—	(227,387)	—	—	(227,387)	—	(227,387)
Settlement of accrued dividends on vested equity awards	—	—	—	—	109	(403)	—	—	(294)	—	(294)
Accrued dividends on unvested equity awards	—	—	—	—	—	(3,268)	—	—	(3,268)	—	(3,268)
Stock-based compensation, net of estimated forfeitures	—	—	—	—	81,690	—	—	—	81,690	—	81,690
Balance as of March 31, 2020	86,269,033	86	(341,973)	(127,298)	12,893,455	(4,399,527)	(1,206,669)	1,509,317	8,669,364	(70)	8,669,294
Net income	—	—	—	—	—	—	—	133,304	133,304	46	133,350
Other comprehensive income	—	—	—	—	—	—	66,378	—	66,378	2	66,380
Issuance of common stock and release of treasury stock for employee equity awards	34,146	—	688	256	(256)	—	—	—	—	—	—
Issuance of common stock for equity offering	2,587,500	3	—	—	1,683,103	—	—	—	1,683,106	—	1,683,106
Dividend distribution on common stock, \$2.66 per share	—	—	—	—	—	(235,334)	—	—	(235,334)	—	(235,334)
Settlement of accrued dividends on vested equity awards	—	—	—	—	—	(44)	—	—	(44)	—	(44)
Accrued dividends on unvested equity awards	—	—	—	—	—	(4,136)	—	—	(4,136)	—	(4,136)
Stock-based compensation, net of estimated forfeitures	—	—	—	—	75,642	—	—	—	75,642	—	75,642
Balance as of June 30, 2020	88,890,679	\$ 89	(341,285)	\$(127,042)	\$14,651,944	\$(4,639,041)	\$(1,140,291)	\$1,642,621	\$10,388,280	\$ (22)	\$10,388,258

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	Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Dividends	AOCI (Loss)	Retained Earnings	Equinix Stockholders' Equity	Non-controlling interests	Total Stockholders' Equity
	Shares	Amount	Shares	Amount							
Balance as of December 31, 2018	81,119,117	\$ 81	(396,859)	\$(145,161)	\$10,751,313	\$(3,331,200)	\$(945,702)	\$ 889,948	\$ 7,219,279	\$ —	\$ 7,219,279
Adjustment from adoption of new accounting standard update	—	—	—	—	—	—	—	(5,973)	(5,973)	—	(5,973)
Net income (loss)	—	—	—	—	—	—	—	118,078	118,078	(331)	117,747
Other comprehensive income	—	—	—	—	—	—	3,337	—	3,337	7	3,344
Issuance of common stock and release of treasury stock for employee equity awards	360,464	—	1,706	360	27,233	—	—	—	27,593	—	27,593
Issuance of common stock for equity offering	2,985,575	3	—	—	1,213,431	—	—	—	1,213,434	—	1,213,434
Dividend distribution on common stock, \$2.46 per share	—	—	—	—	—	(198,933)	—	—	(198,933)	—	(198,933)
Settlement of accrued dividends on vested equity awards	—	—	—	—	284	(387)	—	—	(103)	—	(103)
Accrued dividends on unvested equity awards	—	—	—	—	—	(2,395)	—	—	(2,395)	—	(2,395)
Stock-based compensation, net of estimated forfeitures	—	—	—	—	50,795	—	—	—	50,795	—	50,795
Balance as of March 31, 2019	84,465,156	\$ 84	(395,153)	\$(144,801)	\$12,043,056	\$(3,532,915)	\$(942,365)	\$1,002,053	\$ 8,425,112	\$ (324)	\$ 8,424,788
Net income	—	—	—	—	—	—	—	143,527	143,527	325	143,852
Other comprehensive loss	—	—	—	—	—	—	(16,078)	—	(16,078)	(14)	(16,092)
Issuance of common stock and release of treasury stock for employee equity awards	26,435	—	359	76	(76)	—	—	—	—	—	—
Issuance of common stock under ATM Program	722,361	1	—	—	348,120	—	—	—	348,121	—	348,121
Dividend distribution on common stock, \$2.46 per share	—	—	—	—	—	(207,949)	—	—	(207,949)	—	(207,949)
Settlement of accrued dividends on vested equity awards	—	—	—	—	12	(33)	—	—	(21)	—	(21)
Accrued dividends on unvested equity awards	—	—	—	—	—	(2,972)	—	—	(2,972)	—	(2,972)
Stock-based compensation, net of estimated forfeitures	—	—	—	—	59,502	—	—	—	59,502	—	59,502
Balance as of June 30, 2019	85,213,952	85	(394,794)	(144,725)	12,450,614	(3,743,869)	(958,443)	1,145,580	8,749,242	(13)	8,749,229

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**Accumulated Other Comprehensive Loss**

The changes in accumulated other comprehensive loss, net of tax, by components are as follows (in thousands):

	Balance as of December 31, 2019	Net Change	Balance as of June 30, 2020
Foreign currency translation adjustment ("CTA") loss	\$ (1,056,918)	\$ (232,497)	\$ (1,289,415)
Unrealized gain (loss) on cash flow hedges <sup>(1)</sup>	15,638	(21,124)	(5,486)
Net investment hedge CTA gain <sup>(1)</sup>	107,619	47,888	155,507
Net actuarial gain (loss) on defined benefit plans <sup>(2)</sup>	(952)	55	(897)
Accumulated other comprehensive loss attributable to Equinix	<u>\$ (934,613)</u>	<u>\$ (205,678)</u>	<u>\$ (1,140,291)</u>

(1) Refer to Note 7 for a discussion of the amounts reclassified from accumulated other comprehensive loss to net income.

(2) The Company has a defined benefit pension plan covering all employees in one country where such plan is mandated by law. The Company does not have any defined benefit plans in any other countries. The unamortized gain (loss) on defined benefit plans includes gains or losses resulting from a change in the value of either the projected benefit obligation or the plan assets resulting from a change in an actuarial assumption, net of amortization.

Changes in foreign currencies can have a significant impact to the Company's consolidated balance sheets (as evidenced above in the Company's foreign currency translation loss), as well as its consolidated results of operations, as amounts in foreign currencies are generally translated into more U.S. Dollars when the U.S. Dollar weakens or fewer U.S. Dollars when the U.S. Dollar strengthens. As of June 30, 2020, the U.S. Dollar was generally stronger relative to certain of the currencies of the foreign countries in which the Company operates as compared to December 31, 2019. This overall strengthening of the U.S. Dollar had an overall unfavorable impact on the Company's condensed consolidated financial position because the foreign denominations translated into fewer U.S. Dollars as evidenced by an increase in foreign currency translation loss for the six months ended June 30, 2020 as reflected in the above table. The volatility of the U.S. Dollar as compared to the other currencies in which the Company operates could have a significant impact on its condensed consolidated financial position and results of operations including the amount of revenue that the Company reports in future periods.

**Common Stock**

In March 2019, the Company issued and sold 2,985,575 shares of common stock in a public offering pursuant to a registration statement and a related prospectus and prospectus supplement. The Company received net proceeds of approximately \$1,213.4 million, net of underwriting discounts, commissions and offering expenses.

In May 2020, the Company issued and sold 2,587,500 shares of common stock in a public offering pursuant to a registration statement and a related prospectus and prospectus supplement. The Company received net proceeds of approximately \$1,683.1 million, net of underwriting discounts, commissions and offering expenses.

In December 2018, the Company launched an ATM program, under which it may offer and sell from time to time up to an aggregate of \$750.0 million of its common stock in "at the market" transactions (the "ATM Program"). For the six months ended June 30, 2020, the Company sold 162,530 shares under the ATM Program, for approximately \$101.8 million, net of payment of commissions to sales agents and other offering expenses. For the six months ended June 30, 2019, the Company sold 722,361 shares under the ATM program, for approximately \$348.2 million, net of payment of commissions to sales agents and other offering expenses.

**Stock-Based Compensation**

For the six months ended June 30, 2020, the Compensation Committee and/or the Stock Award Committee of the Company's Board of Directors, as the case may be, approved the issuance of an aggregate of 680,543 shares of restricted stock units to certain employees, including executive officers. These equity awards are subject to vesting provisions and have a weighted-average grant date fair value of \$583.99 per share and a weighted-average requisite service period of 3.33 years. The valuation of restricted stock units with only a service condition or a service and performance condition require no significant assumptions as the fair value for these types of equity awards is based

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solely on the fair value of the Company's stock price on the date of grant. The Company used revenues and adjusted funds from operations ("AFFO") per share as the performance measurements in the restricted stock units with both service and performance conditions that were granted in the six months ended June 30, 2020.

The Company uses a Monte Carlo simulation option-pricing model to determine the fair value of restricted stock units with a service and market condition. The Company used total shareholder return ("TSR") as the performance measurement in the restricted stock units with a service and market condition that were granted in the six months ended June 30, 2020. There were no significant changes in the assumptions used to determine the fair value of restricted stock units with a service and market condition that were granted in 2020 compared to the prior year.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Cost of revenues	\$ 7,655	\$ 6,500	\$ 16,998	\$ 11,512
Sales and marketing	18,215	15,157	36,760	28,458
General and administrative	49,974	39,862	102,652	70,572
Total	<u>\$ 75,844</u>	<u>\$ 61,519</u>	<u>\$ 156,410</u>	<u>\$ 110,542</u>

### 13. Segment Information

While the Company has a single line of business, which is the design, build-out and operation of IBX data centers, it has determined that it has three reportable segments comprised of its Americas, EMEA 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 revenues and adjusted EBITDA performance both on a consolidated basis and based on these three reportable segments.

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The following tables present revenue information disaggregated by product lines and geographic areas (in thousands):

	Three Months Ended June 30, 2020				Six Months Ended June 30, 2020			
	Americas	EMEA	Asia-Pacific	Total	Americas	EMEA	Asia-Pacific	Total
Colocation <sup>(1)</sup>	\$ 447,498	\$ 381,144	\$ 228,803	\$ 1,057,445	\$ 898,452	\$ 743,474	\$ 449,896	\$ 2,091,822
Interconnection	153,387	50,904	45,140	249,431	304,316	99,445	87,811	491,572
Managed infrastructure	28,889	29,012	22,150	80,051	54,418	59,149	43,974	157,541
Other <sup>(1)</sup>	5,081	6,130	—	11,211	10,301	8,596	—	18,897
Recurring revenues	634,855	467,190	296,093	1,398,138	1,267,487	910,664	581,681	2,759,832
Non-recurring revenues	26,564	20,900	24,519	71,983	55,837	56,335	42,659	154,831
Total	\$ 661,419	\$ 488,090	\$ 320,612	\$ 1,470,121	\$ 1,323,324	\$ 966,999	\$ 624,340	\$ 2,914,663

<sup>(1)</sup> Includes some leasing and hedging activities.

	Three Months Ended June 30, 2019				Six Months Ended June 30, 2019			
	Americas	EMEA	Asia-Pacific	Total	Americas	EMEA	Asia-Pacific	Total
Colocation <sup>(1)</sup>	\$ 444,086	\$ 347,795	\$ 213,734	\$ 1,005,615	\$ 884,067	\$ 678,920	\$ 423,399	\$ 1,986,386
Interconnection	142,460	38,614	37,957	219,031	281,023	76,139	74,653	431,815
Managed infrastructure	22,908	28,397	22,467	73,772	44,695	57,485	44,387	146,567
Other <sup>(1)</sup>	5,352	2,275	—	7,627	11,331	4,774	—	16,105
Recurring revenues	614,806	417,081	274,158	1,306,045	1,221,116	817,318	542,439	2,580,873
Non-recurring revenues	29,614	32,774	16,544	78,932	67,670	67,197	32,455	167,322
Total	\$ 644,420	\$ 449,855	\$ 290,702	\$ 1,384,977	\$ 1,288,786	\$ 884,515	\$ 574,894	\$ 2,748,195

<sup>(1)</sup> Includes some leasing and hedging activities.

No single customer accounted for 10% or greater of the Company's accounts receivable or revenues for the three and six months ended June 30, 2020 and 2019.

The Company defines adjusted EBITDA as income from operations excluding depreciation, amortization, accretion, stock-based compensation expense, restructuring charges, impairment charges, transaction costs and gain or loss on asset sales as presented below (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Adjusted EBITDA:				
Americas	\$ 302,107	\$ 309,052	\$ 595,720	\$ 616,890
EMEA	243,597	209,645	473,755	408,717
Asia-Pacific	174,337	158,313	334,776	311,558
Total adjusted EBITDA	720,041	677,010	1,404,251	1,337,165
Depreciation, amortization and accretion expense	(348,434)	(320,550)	(685,865)	(635,255)
Stock-based compensation expense	(75,844)	(61,519)	(156,410)	(110,542)
Impairment charges	—	(386)	—	(14,834)
Transaction costs	(13,617)	(2,774)	(25,147)	(5,245)
Gain (loss) on asset sales	342	—	(857)	—
Income from operations	\$ 282,488	\$ 291,781	\$ 535,972	\$ 571,289



**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

The Company also provides the following additional segment disclosures (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
<b>Depreciation and amortization:</b>				
Americas	\$ 180,934	\$ 167,244	\$ 352,008	\$ 334,014
EMEA	93,012	87,980	185,386	172,145
Asia-Pacific	74,647	64,000	147,068	126,243
Total	<u>\$ 348,593</u>	<u>\$ 319,224</u>	<u>\$ 684,462</u>	<u>\$ 632,402</u>
<b>Capital expenditures:</b>				
Americas	\$ 181,913	\$ 173,623	\$ 366,314	\$ 318,118
EMEA	197,264	170,851	319,392	335,206
Asia-Pacific	102,771	99,697	197,183	154,814
Total	<u>\$ 481,948</u>	<u>\$ 444,171</u>	<u>\$ 882,889</u>	<u>\$ 808,138</u>

The Company's long-lived assets, including property, plant and equipment, net and operating lease right-of-use assets, located in the following geographic areas as of (in thousands):

	June 30, 2020	December 31, 2019
Americas	\$ 5,649,000	\$ 5,400,287
EMEA	4,321,446	4,051,701
Asia-Pacific	2,693,381	2,700,609
Total Property, plant and equipment, net	<u>\$ 12,663,827</u>	<u>\$ 12,152,597</u>
Americas	\$ 368,959	\$ 387,598
EMEA	498,334	521,129
Asia-Pacific	528,808	566,640
Total Operating lease right-of-use assets	<u>\$ 1,396,101</u>	<u>\$ 1,475,367</u>

**EQUINIX, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)**  
**(Unaudited)**

**14. Subsequent Events**

On July 7, 2020, the Company used a portion of the net cash proceeds from the 2025, 2027, 2030, and 2050 Notes, as described in Note 10, to fund the redemption of all of the outstanding €750.0 million 2.875% Senior Notes due 2024 and \$1.1 billion 5.875% Senior Notes due 2026. In connection with the redemption, the Company incurred \$93.5 million of loss on debt extinguishment, including \$77.8 million in redemption premium that was paid in cash and \$15.7 million related to the write-off of unamortized debt issuance costs.

On July 29, 2020, the Company declared a quarterly cash dividend of \$2.66 per share, which is payable on September 23, 2020 to the Company's common stockholders of record as of the close of business on August 19, 2020.

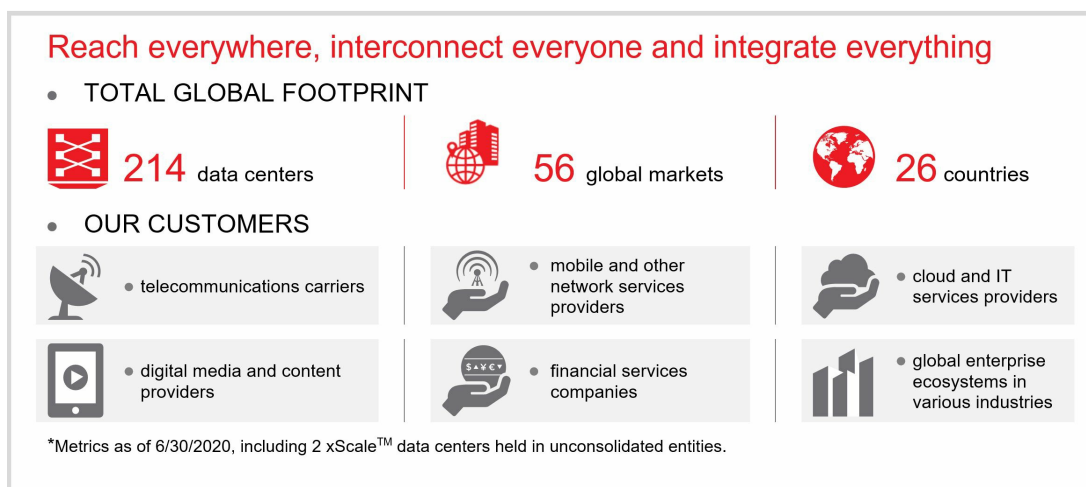
## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

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

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

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

### Overview



Equinix provides a global, vendor-neutral data center, interconnection and edge services platform with offerings that aim to enable our customers to reach everywhere, interconnect everyone and integrate everything. Global enterprises, service providers and business ecosystems of industry partners rely on Equinix IBX data centers and expertise around the world for the safe housing of their critical IT equipment and to protect and connect the world's most valued information assets. They also look to Platform Equinix® for the ability to directly and securely interconnect to the networks, clouds and content that enable today's information-driven global digital economy. Recent Equinix IBX data center openings and acquisitions, as well as xScale data center investments, have expanded our total global footprint to 214 IBX and xScale data centers across 56 markets around the world. Equinix offers the following solutions:

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- premium data center colocation;
- interconnection and data exchange solutions;
- edge services for deploying networking, security and hardware; and
- remote expert support and professional services.

Our interconnected data centers around the world allow our customers to increase information and application delivery performance to users, and quickly access distributed IT infrastructures and business and digital ecosystems, while significantly reducing costs. The Equinix global platform and the quality of our IBX data centers, interconnection offerings and edge services have enabled us to establish a critical mass of customers. As more customers choose Platform Equinix, for bandwidth cost and performance reasons it benefits their suppliers and business partners to collocate in the same data centers. This adjacency creates a "network effect" that enables our customers to capture the full economic and performance benefits of our offerings. These partners, in turn, pull in their business partners, creating a "marketplace" for their services. Our global platform enables scalable, reliable and cost-effective interconnection that increases data traffic exchange while lowering overall cost and increasing flexibility. Our focused business model is built on our critical mass of enterprise and service provider customers and the resulting "marketplace" effect. This global platform, combined with our strong financial position, continues to drive new customer growth and bookings.

Historically, our market was served by large telecommunications carriers who have bundled their products and services with their colocation offerings. The data center market landscape has evolved to include private and vendor-neutral multitenant data center ("MTDC") providers, hyperscale cloud providers, managed infrastructure and application hosting providers, and systems integrators. It is estimated that Equinix is one of more than 1,200 companies that provide MTDC offerings around the world. Each of these data center solutions providers can bundle various colocation, interconnection and network offerings and outsourced IT infrastructure solutions. We are able to offer our customers a global platform that reaches 26 countries with the industry's largest and most active ecosystem of partners in our sites, proven operational reliability, improved application performance and a highly scalable set of offerings.

The cabinet utilization rate represents the percentage of cabinet space billed versus total cabinet capacity, which is used to measure how efficiently we are managing our cabinet capacity. Our cabinet utilization rate varies from market to market among our IBX data centers across the Americas, EMEA and Asia-Pacific regions. Our cabinet utilization rates were approximately 79% and 81%, respectively, as of June 30, 2020 and 2019. Excluding the impact of our IBX data center expansion projects that have opened during the last 12 months, our cabinet utilization rate would have increased to approximately 81% as of June 30, 2020. 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 high power-demand customers. This increased power consumption has driven us to build out our new IBX data centers to support power and cooling needs twice that of previous IBX data centers. We could face power limitations in our IBX data 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 IBX data center, which could have a negative impact on our ability to grow revenues, affecting our financial performance, operating results and cash flows.

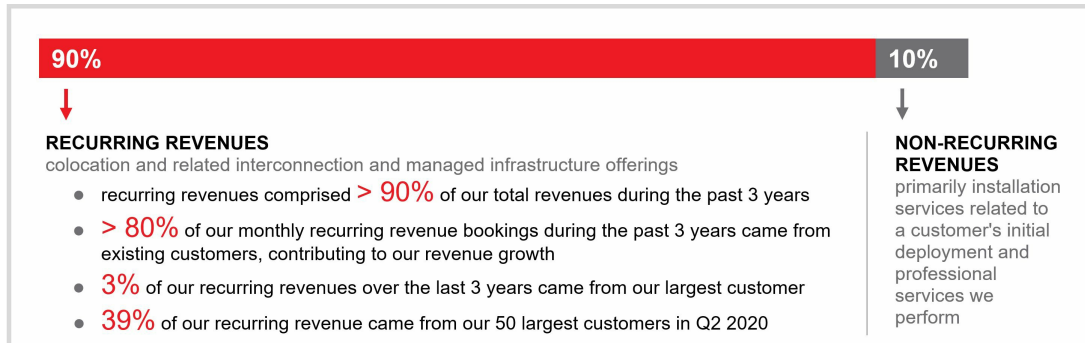
In 2019, we closed our first joint venture with GIC to develop and operate xScale data centers to serve the needs of the growing hyperscale data center market in Europe, including large cloud service providers (the "EMEA Joint Venture"). In April 2020, we entered into an agreement to form a second joint venture with GIC to develop and operate xScale data centers in Asia-Pacific (the "Asia-Pacific Joint Venture").

Strategically, we will continue to look at attractive opportunities to grow our market share and selectively improve our footprint and offerings. As was the case with our recent expansions and acquisitions, our expansion criteria will be dependent on a number of factors, including but not limited to demand from new and existing customers, quality of the design, power capacity, access to networks, clouds and software partners, capacity availability in the current market location, amount of incremental investment required by us in the targeted property, automation capabilities, developer talent pool, lead-time to break even on a free cash flow basis and in-place customers. Like our recent expansions and acquisitions, the right combination of these factors may be attractive to us. Depending on the circumstances, these transactions may require additional capital expenditures funded by upfront cash payments or through long-term financing arrangements in order to bring these properties up to Equinix standards. Property expansion may be in the

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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.

### **Revenue:**



Our business is based on a recurring revenue model comprised of colocation and related interconnection and managed infrastructure offerings. We consider these offerings recurring because 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. In addition, during the past three years, more than 80% of our monthly recurring revenue bookings came from existing customers, contributing to our revenue growth. Our largest customer accounted for approximately 3% of our recurring revenues for both the three and six months ended June 30, 2020 and 2019. Our 50 largest customers accounted for approximately 39% of our recurring revenues for both the three and six months ended June 30, 2020 and 2019.

Our non-recurring revenues are primarily comprised of installation services related to a customer's initial deployment and professional services we perform. These services are considered to be non-recurring because they are billed typically once, upon completion of the installation or the 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 period of the contract term. Additionally, revenue from contract settlements, when a customer wishes to terminate their contract early, is generally treated as a contract modification and recognized ratably over the remaining term of the contract, if any. As a percentage of total revenues, we expect non-recurring revenues to represent less than 10% of total revenues for the foreseeable future.

### **Operating Expenses:**

**Cost of Revenues.** The largest components of our cost of revenues are depreciation, rental payments related to our leased IBX data centers, utility costs, including electricity, bandwidth access, IBX data center employees' salaries and benefits, including stock-based compensation, repairs and maintenance, supplies and equipment and security. A 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 that 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 generally increase in the future on a per-unit or fixed basis, in addition to the variable increase related to the growth in consumption by our customers. In addition, the cost of electricity is generally higher in the summer months, as compared to other times of the year. To the extent we incur increased utility costs, such increased costs could materially impact our financial condition, results of operations and cash flows. Furthermore, to the extent we incur increased electricity or other 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.** Our sales and marketing expenses consist primarily of compensation and related costs for sales and marketing personnel, including stock-based compensation, amortization of contract costs, marketing programs, public relations, promotional materials and travel, as well as bad debt expense and amortization of customer relationship intangible assets.

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**General and Administrative.** Our 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 on back office systems.

### **Taxation as a REIT**

We elected to be taxed as a real estate investment trust for U.S. federal income tax purposes ("REIT") beginning with our 2015 taxable year. As of June 30, 2020, our REIT structure included all of our data center operations in the U.S., Canada, Mexico, Japan, Singapore and the data center operations in EMEA with the exception of Bulgaria, the United Arab Emirates, and the data center operations outside Amsterdam in the Netherlands. Our data center operations in other jurisdictions are operated as taxable REIT subsidiaries ("TRSs"). We included our interest in the EMEA Joint Venture in our REIT structure.

As a REIT, we generally are permitted to deduct from our U.S. federal taxable income the dividends we pay to our stockholders. The income represented by such dividends is not subject to U.S. federal income taxes at the entity level but is taxed, if at all, at the stockholder level. Nevertheless, the income of our TRSs which hold our U.S. operations that may not be REIT compliant is subject to U.S. federal and state corporate income taxes, as applicable. Likewise, our foreign subsidiaries continue to be subject to local income taxes in jurisdictions in which they hold assets or conduct operations, regardless of whether held or conducted through TRSs or through qualified REIT subsidiaries ("QRSs"). We are also subject to a separate U.S. federal corporate income tax on any gain recognized from a sale of a REIT asset where our basis in the asset is determined by reference to the basis of the asset in the hands of a C corporation (such as an asset held by us or a QRS following the liquidation or other conversion of a former TRS). This built-in-gains tax is generally applicable to any disposition of such an asset during the five-year period after the date we first owned the asset as a REIT asset to the extent of the built-in-gain based on the fair market value of such asset on the date we first held the asset as a REIT asset. If we fail to remain qualified for U.S. federal income taxation as a REIT, we will be subject to U.S. federal income taxes at regular corporate income tax rates. Even if we remain qualified for U.S. federal income taxation as a REIT, we may be subject to some federal, state, local and foreign taxes on our income and property in addition to taxes owed with respect to our TRSs' operations. In particular, while state income tax regimes often parallel the U.S. federal income tax regime for REITs, many states do not completely follow federal rules, and some may not follow them at all.

We continue to monitor our REIT compliance in order to maintain our qualification for U.S. federal income taxation as a REIT. For this and other reasons, as necessary, we may convert some of our data center operations in other countries into the REIT structure in future periods.

On each of March 18, 2020, and June 17, 2020 we paid a quarterly cash dividend of \$2.66 per share. On July 29, 2020, we declared a quarterly cash dividend of \$2.66 per share, payable on September 23, 2020, to our common stockholders of record as of the close of business on August 19, 2020. We expect the amount of all of our 2020 quarterly distributions and other applicable distributions to equal or exceed our REIT taxable income to be recognized in 2020.

### **The Impact of COVID-19 on Our Results and Operations**

In December 2019, a novel strain of coronavirus, referred to as Coronavirus disease 2019, or COVID-19, emerged. On February 29, 2020, the World Health Organization (WHO) raised the COVID-19 threat from high to very high, and on March 11, 2020, the WHO characterized COVID-19 as a global pandemic. The global pandemic and the efforts implemented to address the pandemic, including the issuance of "shelter-in-place" orders and social distancing guidelines, have impacted major economic and financial markets globally.

Many of our IBX data centers have been identified as "essential businesses" or "critical infrastructure" by local governments for purposes of remaining open during the COVID-19 pandemic. All of our IBX data centers remain operational at the time of filing of this quarterly report on Form 10-Q. We have activated our business continuity plans globally with the goal of providing seamless operations throughout our facilities, including provisions for ensuring all data centers remain staffed and fully operational and that our IBXs are equipped with the necessary equipment and supplies. We have implemented precautionary measures to minimize the risk of operational impact and to protect the health and safety of our employees, customers, partners and communities. These include implementing tools such as an appointment-based system to control timing and frequency of visits while also encouraging our customers to leverage our IBX technicians via Smart Hands, our remote operational support service, in order to restrict visits and minimize the number of people and the amount of time spent in our IBX facilities.

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All of our corporate offices were closed as a result of the pandemic and we instructed our non-IBX employees across the globe to work from home until further notice. Recently, we have announced a phased plan for return-to-office for non-IBX attached sites and will open offices as local conditions allow. Additionally, we have decided to continue to limit employee travel and have made the decision to either postpone or virtualize all global events through January 2021.

We are experiencing some construction delays, however, to date, the construction delays and additional costs are insignificant relative to the overall project duration and budget. All equipment for construction projects which are scheduled to be placed in service in 2020 has been ordered, and is currently being manufactured or delivered. We are actively monitoring our vendors and suppliers to evaluate any anticipated changes in equipment availability or delivery timetables. We have redundancies built into our supply chain of vendors and, to the best of our ability, we keep a stock of critical items on site to ensure repairs can be completed. At this time, we have not observed any significant disruption to our IBX data center operations due to supply chain impacts from COVID-19.

During the three and six months ended June 30, 2020, the COVID-19 pandemic did not have a material impact on our results of operations. The majority of our revenue is derived from large companies across a diverse set of industries. Customers operating in sectors more drastically impacted by the COVID-19 pandemic, such as retail, travel, and energy, made up an insignificant percentage of our revenue. During the six months ended June 30, 2020, we booked an insignificant revenue reserve due to the COVID-19 impact. Smart Hands service revenues declined during the six months ended June 30, 2020, as we waived Smart Hands service fees from the affected customers in certain circumstances. We assessed realized and potential credit deterioration of our customers due to changes in the macroeconomic environment, considered the potential for payment term revision requests, and increased our allowance for doubtful accounts for accounts receivable by \$6.3 million for the six months ended June 30, 2020. We also incurred one-time cash bonuses and compensation expense of \$8.6 million for our IBX employees and other employees to support their work-from-home requirements during the six months ended June 30, 2020. We have seen some travel expense savings during the first half of 2020 and expect to see a significant reduction for the rest of this year resulting from travel restrictions imposed in response to the COVID-19 pandemic.

Looking ahead, the full impact of the COVID-19 pandemic on our financial condition or results of operations remains uncertain and will depend on a number of factors, including the progression of the COVID-19 pandemic, governmental response, impact on our customers and vendors, the timing of recovery and global financial markets. Our past results may not be indicative of our future performance and historical trends may differ materially.

For additional details regarding the impacts and risks to our business from the COVID-19 pandemic, refer to Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations and Part II, Item 1A. Risk Factors included elsewhere in this Quarterly Report on Form 10-Q.

### **2020 Highlights:**

- In January, we redeemed the remaining \$343.7 million principal amount of the 5.375% Senior Notes due 2022. See Note 10 within the Condensed Consolidated Financial Statements.
- In January, we completed the acquisition of three data centers in Mexico from Axtel S.A.B. de C.V. ("Axtel") for a total purchase consideration of approximately \$189.0 million. See Note 4 within the Condensed Consolidated Financial Statements.
- In March, we completed the acquisition of Packet Host, Inc. ("Packet"), a leading bare metal automation platform for a total cash purchase price of approximately \$290.3 million. See Note 4 within the Condensed Consolidated Financial Statements.
- In March 2020, we borrowed a total of \$250.0 million under our Revolving Facility. In May, we repaid the \$250.0 million outstanding under our Revolving Facility. As of June 30, 2020, the amount available to borrow under the Revolving Facility was approximately \$1.9 billion. See Note 10 within the Condensed Consolidated Financial Statements.
- In April, we entered into a credit agreement which provides for senior unsecured 364-day term loan facilities in an aggregate principal amount of \$750.0 million. On April 15, 2020, we borrowed \$391.0 million, as well as €100.0 million or \$109.8 million at the exchange rate in effect on that date. In May and June, we repaid all amounts outstanding under the 364-day term loan facilities. See Note 10 within the Condensed Consolidated Financial Statements.

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- In April, we entered into an agreement to form a second joint venture in the form of a limited liability partnership with GIC to develop and operate xScale data centers in Asia-Pacific. Upon closing, GIC will contribute cash in exchange for an 80% partnership interest in the Asia-Pacific Joint Venture. We agreed to sell three development sites in Japan, Osaka 2, Tokyo 12, and Tokyo 14, to the Asia-Pacific Joint Venture in exchange for a 20% partnership interest in the Asia-Pacific Joint Venture and cash proceeds. The assets and liabilities of these data center facilities, which are currently included within our Asia-Pacific operating segment, were classified as held for sale as of June 30, 2020. The transaction is expected to close in the fourth quarter of 2020, pending regulatory approval and other closing conditions. See Note 5 within the Condensed Consolidated Financial Statements.
- In May 2020, we issued and sold 2,587,500 shares of common stock in a public offering for net proceeds of approximately \$1,683.1 million, after deducting underwriting discounts, commissions and offering expenses. See Note 12 within the Condensed Consolidated Financial Statements.
- In May 2020, we entered into an agreement to purchase a portfolio of 13 data center sites, representing 25 data centers, across Canada from BCE Inc. ("Bell") for approximately \$750.0 million in an all-cash transaction (the "Bell Acquisition"). The Bell Acquisition is expected to close in the fourth quarter of 2020, subject to customary closing conditions including regulatory approval. See Note 4 within the Condensed Consolidated Financial Statements.
- In June, we issued \$2.6 billion in Senior Notes due 2025, 2027, 2030 and 2050. In July, using a portion of the proceeds, we redeemed all of our outstanding €750.0 million 2.875% Senior Notes due 2024 and \$1.1 billion 5.875% Senior Notes due 2026. See Note 10 and Note 14 within the Consolidated Financial Statements.
- During the six months ended June 30, 2020, we sold 162,530 shares under our "at-the-market" stock offering program (the "ATM Program") for approximately \$101.8 million in proceeds, net of payment of commissions to sales agents and other offering expenses. See Note 12 within the Condensed Consolidated Financial Statements.

## **Results of Operations**

Our results of operations for the three and six months ended June 30, 2020 include the results of operations from the acquisitions of Packet Host, Inc. from March 2, 2020 and three data centers in Mexico from Axtel S.A.B. de C.V. from January 8, 2020.

In order to provide a framework for assessing our performance excluding the impact of foreign currency fluctuations, we supplement the year-over-year actual change in operating results with comparative changes on a constant currency basis. Presenting constant currency results of operations is a non-GAAP financial measure. See "Non-GAAP Financial Measures" below for further discussion.

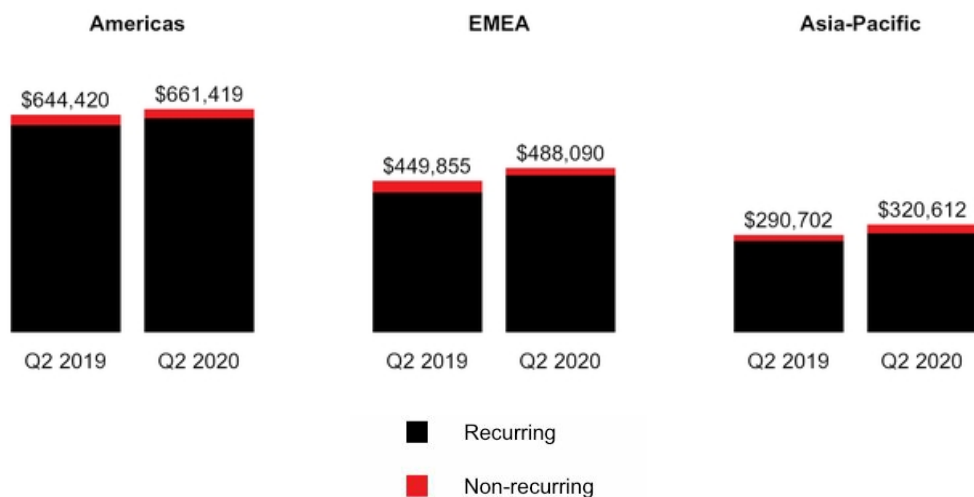


**Three Months Ended June 30, 2020 and 2019**

**Revenues.** Our revenues for the three months ended June 30, 2020 and 2019 were generated from the following revenue classifications and geographic regions (dollars in thousands):

	Three Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
<b>Americas:</b>						
Recurring revenues	\$ 634,855	43%	\$ 614,806	44%	3 %	5 %
Non-recurring revenues	26,564	2%	29,614	2%	(10)%	(9)%
	<u>661,419</u>	<u>45%</u>	<u>644,420</u>	<u>46%</u>	<u>3 %</u>	<u>5 %</u>
<b>EMEA:</b>						
Recurring revenues	467,190	32%	417,081	30%	12 %	15 %
Non-recurring revenues	20,900	1%	32,774	3%	(36)%	(35)%
	<u>488,090</u>	<u>33%</u>	<u>449,855</u>	<u>33%</u>	<u>8 %</u>	<u>11 %</u>
<b>Asia-Pacific:</b>						
Recurring revenues	296,093	20%	274,158	20%	8 %	10 %
Non-recurring revenues	24,519	2%	16,544	1%	48 %	49 %
	<u>320,612</u>	<u>22%</u>	<u>290,702</u>	<u>21%</u>	<u>10 %</u>	<u>12 %</u>
<b>Total:</b>						
Recurring revenues	1,398,138	95%	1,306,045	94%	7 %	9 %
Non-recurring revenues	71,983	5%	78,932	6%	(9)%	(8)%
	<u>\$ 1,470,121</u>	<u>100%</u>	<u>\$ 1,384,977</u>	<u>100%</u>	<u>6 %</u>	<u>8 %</u>

**Revenues**  
(dollars in thousands)



**Americas Revenues.** During the three months ended June 30, 2020, Americas revenue increased by 3% (5% on a constant currency basis). Growth in Americas revenues was primarily due to:

- approximately \$13.3 million of incremental revenues from the Packet and Axtel acquisitions;

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- \$8.7 million of incremental revenues generated from our recently-opened IBX data centers or IBX data center expansions;

The increase was partially offset by lower non-recurring revenues primarily related to our Smart Hands products as during the three months ended June 30, 2020, we waived certain Smart Hands service fees from the affected customers in order to restrict visits to our IBX facilities during the COVID-19 pandemic.

**EMEA Revenues.** During the three months ended June 30, 2020, EMEA revenue increased by 8% (11% on a constant currency basis). Growth in EMEA revenues was primarily due to:

- approximately \$11.3 million of incremental revenues generated from our recently-opened IBX data centers or IBX data center expansions; and
- an increase in orders from both our existing customers and new customers during the period.

The increase was partially offset by lower non-recurring revenues, primarily due to decreases in Equinix Infrastructure Service ("EIS") products sales.

**Asia-Pacific Revenues.** During the three months ended June 30, 2020, Asia-Pacific revenue increased by 10% (12% on a constant currency basis). Growth in Asia-Pacific revenue was primarily due to:

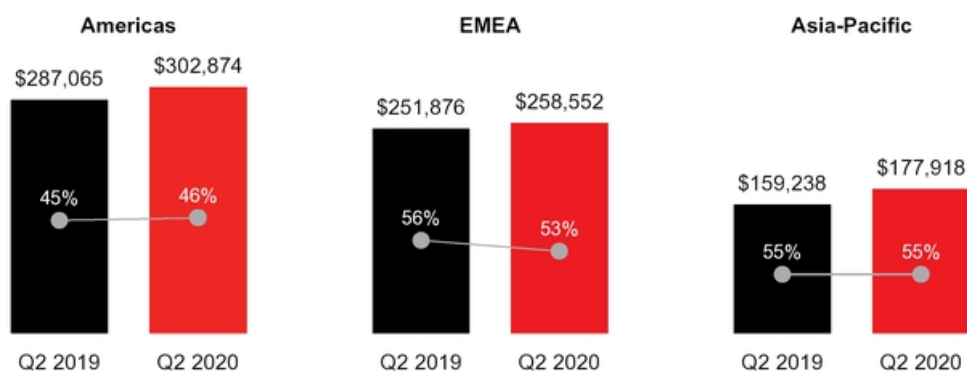
- approximately \$14.6 million of incremental revenues generated from our recently-opened IBX data centers or IBX data center expansions;
- higher non-recurring revenues, primarily due to increases in EIS products sales; and
- an increase in orders from both our existing customers and new customers during the period.

**Cost of Revenues.** Our cost of revenues for the three months ended June 30, 2020 and 2019 were split among the following geographic regions (dollars in thousands):

	Three Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 302,874	41%	\$ 287,065	41%	6%	8%
EMEA	258,552	35%	251,876	36%	3%	5%
Asia-Pacific	177,918	24%	159,238	23%	12%	13%
Total	\$ 739,344	100%	\$ 698,179	100%	6%	8%

### Cost of Revenues

(dollars in thousands; percentages indicate expenses as a percentage of revenues)



**Americas Cost of Revenues.** During the three months ended June 30, 2020, Americas cost of revenues increased by 6% (8% on a constant currency basis). The increase in our Americas cost of revenues was primarily due to:

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- approximately \$9.3 million of incremental cost of revenues from the Packet and Axtel acquisitions;
- \$2.4 million of higher utilities costs driven by increased utility usage to support IBX data center expansions and utility price increases; and
- \$1.8 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth.

**EMEA Cost of Revenues.** During the three months ended June 30, 2020, EMEA cost of revenues increased by 3% (5% on a constant currency basis). The increase in our EMEA cost of revenues was primarily due to:

- \$7.5 million of higher depreciation expenses driven by IBX data center expansions in London and Frankfurt;
- \$4.6 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth;
- \$5.6 million of higher consulting services and office expense, primarily due to the timing of spending and additional spending on personal protective equipment for our IBX employees in response to the COVID-19 pandemic; and
- \$1.7 million of higher rent and facilities costs and repairs and maintenance expense.

This increase was partially offset by:

- \$8.3 million of lower other expenses due to legal claims from subcontractors as a result of a general contractor bankruptcy during the three months ended June 30, 2019; and
- \$4.5 million of lower costs incurred related to decreased EIS revenues, primarily in the Netherlands, Spain and United Kingdom.

**Asia-Pacific Cost of Revenues.** During the three months ended June 30, 2020, Asia-Pacific cost of revenues increased by 12% (13% on a constant currency basis). The increase in our Asia-Pacific cost of revenues was primarily due to:

- \$10.6 million of higher depreciation expense, primarily from IBX data center expansions in Singapore, Japan, and Australia;
- \$3.7 million of higher utilities costs and rent and facility costs, primarily driven by expansions and higher utility usage in Hong Kong and Japan; and
- \$6.0 million of higher costs from increased EIS revenues, primarily in Japan and Australia.

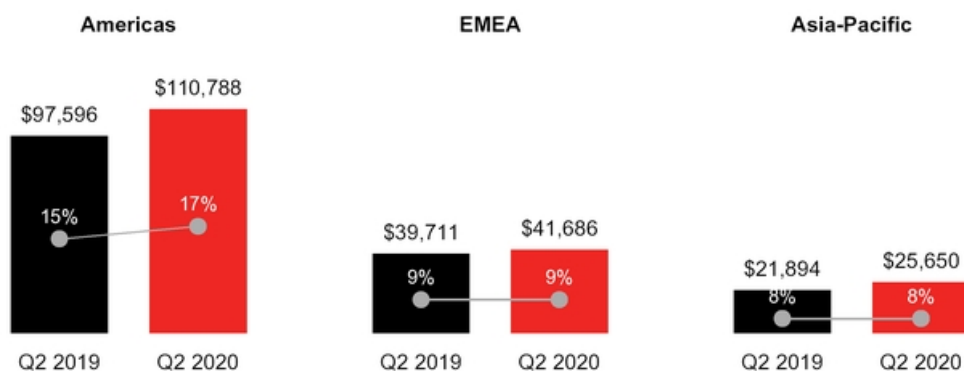
We expect Americas, EMEA and Asia-Pacific cost of revenues to increase as we continue to grow our business, including from the impact of acquisitions.

**Sales and Marketing Expenses.** Our sales and marketing expenses for the three months ended June 30, 2020 and 2019 were split among the following geographic regions (dollars in thousands):

	Three Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 110,788	62%	\$ 97,596	61%	14%	15%
EMEA	41,686	24%	39,711	25%	5%	7%
Asia-Pacific	25,650	14%	21,894	14%	17%	19%
Total	\$ 178,124	100%	\$ 159,201	100%	12%	13%

**Sales and Marketing Expenses**

(dollars in thousands; percentages indicate expenses as a percentage of revenues)



**Americas Sales and Marketing Expenses.** During the three months ended June 30, 2020, Americas sales and marketing expenses increased by 14% (15% on a constant currency basis). The increase in our Americas sales and marketing expenses was primarily due to:

- \$9.3 million of higher compensation costs, including sales compensation, salaries and stock-based compensation, primarily due to additional compensation expenses incurred related to our recent acquisitions and overall headcount growth; and
- \$2.5 million of higher depreciation and amortization expense, primarily due to intangible assets acquired from Packet and Axtel.

**EMEA Sales and Marketing Expenses.** Our EMEA sales and marketing expense did not materially change during the three months ended June 30, 2020 as compared to the three months ended June 30, 2019.

**Asia-Pacific Sales and Marketing Expenses.** Our Asia-Pacific sales and marketing expense increased by 17% (19% on a constant currency basis) during the three months ended June 30, 2020. The increase in our Asia-Pacific sales and marketing expenses was primarily due to:

- \$2.2 million increase of higher compensation costs, including sales compensation, salaries, and stock-based compensation due to headcount growth.

We anticipate that we will continue to invest in Americas, EMEA and Asia-Pacific sales and marketing initiatives and expect our Americas, EMEA and Asia-Pacific sales and marketing expenses to increase as we grow our business. Additionally, given that certain global sales and marketing functions are located within the U.S., we expect Americas sales and marketing expenses as a percentage of revenues to be higher than our other regions.

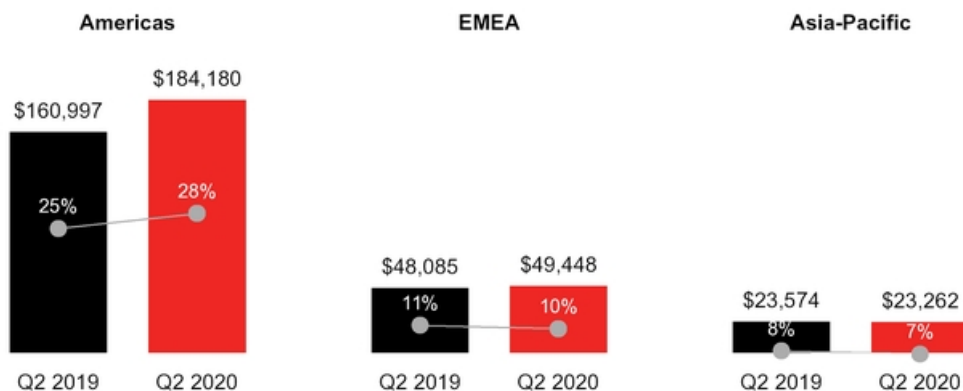
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**General and Administrative Expenses.** Our general and administrative expenses for the three months ended June 30, 2020 and 2019 were split among the following geographic regions (dollars in thousands):

	Three Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 184,180	72%	\$ 160,997	69%	14 %	15%
EMEA	49,448	19%	48,085	21%	3 %	5%
Asia-Pacific	23,262	9%	23,574	10%	(1)%	1%
Total	\$ 256,890	100%	\$ 232,656	100%	10 %	12%

**General and Administrative Expenses**

(dollars in thousands; percentages indicate expenses as a percentage of revenues)



**Americas General and Administrative Expenses.** During the three months ended June 30, 2020, Americas general and administrative expenses increased by 14% (15% on a constant currency basis). The increase in our Americas general and administrative expenses was primarily due to:

- \$11.9 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to additional compensation expenses incurred related to our recent acquisitions, higher payroll taxes and overall headcount growth;
- \$8.3 million of higher depreciation expense associated with the implementation of certain systems to support the integration and growth of our business;
- \$3.0 million of higher office expenses due to additional software and support services; and
- \$2.5 million of higher consulting expenses in support of our business growth.

The increase was partially offset by lower travel and entertainment expenses resulting from travel restrictions imposed in response to the COVID-19 pandemic.

**EMEA General and Administrative Expenses.** Our EMEA general and administrative expenses did not materially change during the three months ended June 30, 2020 as compared to the three months ended June 30, 2019.

**Asia-Pacific General and Administrative Expenses.** Our Asia-Pacific general and administrative expenses did not materially change during the three months ended June 30, 2020 as compared to the three months ended June 30, 2019.

Going forward, although we are carefully monitoring our spending, we expect Americas, EMEA and Asia-Pacific general and administrative expenses to increase as we continue to further scale our operations to support our growth, including investments in our back office systems and investments to maintain our qualification for taxation as a REIT

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and to integrate recent acquisitions. Additionally, given that our corporate headquarters is located within the U.S., we expect Americas general and administrative expenses as a percentage of revenues to be higher than our other regions.

**Transaction Costs.** During the three months ended June 30, 2020, we recorded transaction costs of \$13.6 million, primarily related to costs incurred in connection with the formation of the Asia-Pacific Joint Venture. During the three months ended June 30, 2019, we did not record a significant amount of transaction costs.

**Impairment Charge.** During the three months ended June 30, 2020, we did not record any impairment charges. During the three months ended June 30, 2019, we did not record a significant amount of impairment charges.

**Gain or Loss on Asset Sales.** During the three months ended June 30, 2020, we did not record a significant amount of gain on asset sales. During the three months ended June 30, 2019, we did not record any gain or loss on asset sales.

**Income from Operations.** Our income from operations for the three months ended June 30, 2020 and 2019 was split among the following geographic regions (dollars in thousands):

	Three Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 58,423	21%	\$ 99,195	34%	(41)%	(37)%
EMEA	138,154	49%	106,555	37%	30%	35%
Asia-Pacific	85,911	30%	86,031	29%	—%	3%
Total	<u>\$ 282,488</u>	<u>100%</u>	<u>\$ 291,781</u>	<u>100%</u>	(3)%	—%

**Americas Income from Operations.** During the three months ended June 30, 2020, Americas income from operations decreased by 41% (37% on a constant currency basis). The decrease in our Americas income from operations was primarily due to higher operating expenses as a percentage of revenues. Namely, a large increase in general and administrative expenses was primarily driven by higher compensation costs, which were in part related to the Packet and Axtel acquisitions, along with higher office, consulting and depreciation expenses.

**EMEA Income from Operations.** During the three months ended June 30, 2020, EMEA income from operations increased by 30% (35% on a constant currency basis). The increase in our EMEA income from operations was primarily due to higher revenues as a result of our IBX data center expansion activity and organic growth, as described above, as well as lower operating expenses as a percentage of revenues.

**Asia-Pacific Income from Operations.** Our Asia-Pacific income from operations did not materially change during the three months ended June 30, 2020 as compared to the three months ended June 30, 2019.

**Interest Income.** Interest income was \$1.7 million and \$7.8 million, respectively, for the three months ended June 30, 2020 and 2019. The average annualized yield for the three months ended June 30, 2020 was 0.22% versus 1.89% for the three months ended June 30, 2019.

**Interest Expense.** Interest expense decreased to \$108.5 million for the three months ended June 30, 2020 from \$120.5 million for the three months ended June 30, 2019, primarily attributable to the tender and redemption of the 5.375% Senior Notes due 2022, 5.375% Senior Notes due 2023, and 5.750% Senior Notes due 2025, partially offset by the issuance of the 2.625% Senior Notes due 2024, 2.900% Senior Notes due 2026 and 3.200% Senior Notes due 2029. During the three months ended June 30, 2020 and 2019, we capitalized \$6.9 million and \$5.9 million, respectively, of interest expense to construction in progress.

**Other Income.** We recorded net other income of \$4.3 million and \$12.2 million, respectively, for the three months ended June 30, 2020 and 2019. Other income is primarily comprised of foreign currency exchange gains and losses during the periods.

**Loss on Debt Extinguishment.** We did not record a significant amount of loss on debt extinguishment during the three months ended June 30, 2020 and did not record any loss on debt extinguishment during the three months ended June 30, 2019.

**Income Taxes.** We operate as a REIT for U.S. federal income tax purposes. As a REIT, we are generally not subject to U.S. federal and state income taxes on our taxable income distributed to stockholders. We intend to distribute

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or have distributed the entire taxable income generated by the operations of our REIT and QRSs for the tax years ending December 31, 2020 and December 31, 2019, respectively. As such, other than tax on built-in-gains recognized and foreign withholding taxes, as applicable, no provision for U.S. federal income taxes for the REIT and QRSs has been included in the accompanying condensed consolidated financial statements for the three months ended June 30, 2020 and 2019.

We have made TRS elections for some of our subsidiaries in and outside the U.S. In general, a TRS may provide services that may otherwise be considered impermissible for REITs to provide and may hold assets that may not be REIT compliant. U.S. income taxes for the TRS entities located in the U.S. and foreign income taxes for our foreign operations regardless of whether the foreign operations are operated as QRSs or TRSs have been accrued, as necessary, for the three months ended June 30, 2020 and 2019.

For the three months ended June 30, 2020 and 2019, we recorded \$44.8 million and \$47.3 million of income tax expense, respectively. Our effective tax rates were 25.1% and 24.8% for the three months ended June 30, 2020 and 2019, respectively.

**Adjusted EBITDA.** Adjusted EBITDA is a key factor in how we assess the operating performance of our segments and develop regional growth strategies such as IBX data center expansion decisions. We define adjusted EBITDA as income or loss from operations excluding depreciation, amortization, accretion, stock-based compensation expense, restructuring charges, impairment charges, transaction costs and gain or loss on asset sales. See "Non-GAAP Financial Measures" below for more information about adjusted EBITDA and a reconciliation of adjusted EBITDA to income or loss from operations. Our adjusted EBITDA for the three months ended June 30, 2020 and 2019 was split among the following geographic regions (dollars in thousands):

	Three Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 302,107	42%	\$ 309,052	46%	(2)%	—%
EMEA	243,597	34%	209,645	31%	16 %	19%
Asia-Pacific	174,337	24%	158,313	23%	10 %	12%
Total	\$ 720,041	100%	\$ 677,010	100%	6 %	9%

**Americas Adjusted EBITDA.** During the three months ended June 30, 2020, Americas adjusted EBITDA decreased by 2% (0% on a constant currency basis). The decrease in our Americas adjusted EBITDA was primarily due to the increase in cash compensation expenses, consulting expenses and office expenses.

**EMEA Adjusted EBITDA.** During the three months ended June 30, 2020, EMEA adjusted EBITDA increased by 16% (19% on a constant currency basis). The increase in our EMEA adjusted EBITDA was primarily due to higher revenues as a result of our IBX data center expansion activity and organic growth as described above, as well as lower operating expenses as a percentage of revenues.

**Asia-Pacific Adjusted EBITDA.** During the three months ended June 30, 2020, Asia-Pacific adjusted EBITDA increased by 10% (12% on a constant currency basis). The increase in our Asia-Pacific adjusted EBITDA was primarily due to higher revenues as a result of our IBX data center expansion activity and organic growth as described above, as well as lower operating expenses as a percentage of revenues.

**Six Months Ended June 30, 2020 and 2019**

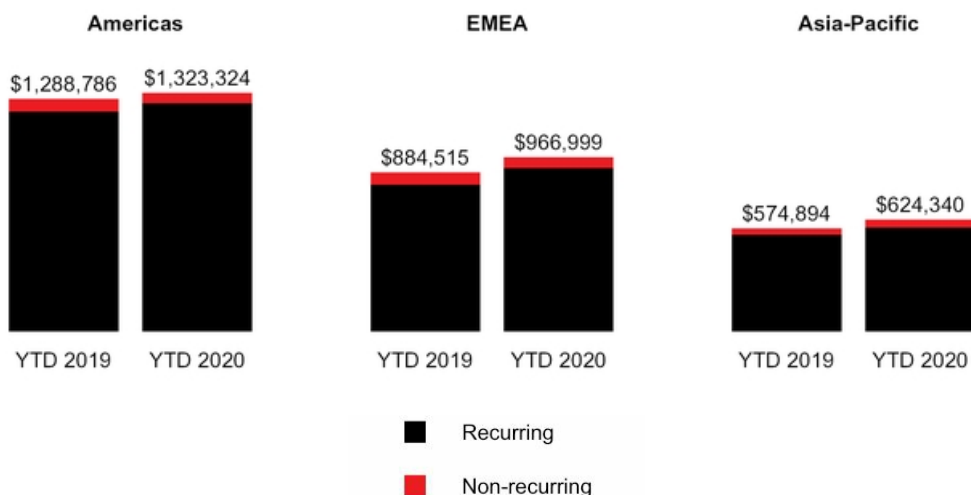
**Revenues.** Our revenues for the six months ended June 30, 2020 and 2019 were generated from the following revenue classifications and geographic regions (dollars in thousands):

	Six Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency <sup>(1)</sup>
<b>Americas:</b>						
Recurring revenues	\$ 1,267,487	43%	\$ 1,221,116	44%	4 %	5 %
Non-recurring revenues	55,837	3%	67,670	3%	(17)%	(16)%
	<u>1,323,324</u>	<u>46%</u>	<u>1,288,786</u>	<u>47%</u>	<u>3 %</u>	<u>4 %</u>
<b>EMEA:</b>						
Recurring revenues	910,664	31%	817,318	30%	11 %	13 %
Non-recurring revenues	56,335	2%	67,197	2%	(16)%	(14)%
	<u>966,999</u>	<u>33%</u>	<u>884,515</u>	<u>32%</u>	<u>9 %</u>	<u>11 %</u>
<b>Asia-Pacific:</b>						
Recurring revenues	581,681	20%	542,439	20%	7 %	9 %
Non-recurring revenues	42,659	1%	32,455	1%	31 %	33 %
	<u>624,340</u>	<u>21%</u>	<u>574,894</u>	<u>21%</u>	<u>9 %</u>	<u>10 %</u>
<b>Total:</b>						
Recurring revenues	2,759,832	94%	2,580,873	94%	7 %	9 %
Non-recurring revenues	154,831	6%	167,322	6%	(7)%	(6)%
	<u>\$ 2,914,663</u>	<u>100%</u>	<u>\$ 2,748,195</u>	<u>100%</u>	<u>6 %</u>	<u>8 %</u>

<sup>(1)</sup> As defined in the "Non-GAAP Financial Measures" section in Item 2 of this Quarterly Report on Form 10-Q.



**Revenues**  
(dollars in thousands)



**Americas Revenues.** During the six months ended June 30, 2020, Americas revenue increased by 3% (4% on a constant currency basis). Growth in Americas revenues was primarily due to:

- approximately \$21.5 million of incremental revenues from the Packet and Axtel acquisitions; and
- \$15.0 million of incremental revenues generated from our recently-opened IBX data centers or IBX data center expansions.

The increase was partially offset by lower non-recurring revenues, primarily due to decreases in EIS products sales and lower revenues from Smart Hands products as during the six months ended June 30, 2020, we waived certain Smart Hands service fees from the affected customers in order to restrict visits to our IBX facilities during the COVID-19 pandemic.

**EMEA Revenues.** During the six months ended June 30, 2020, EMEA revenue increased by 9% (11% on a constant currency basis). Growth in EMEA revenues was primarily due to:

- approximately \$28.6 million of incremental revenues generated from our recently-opened IBX data centers or IBX data center expansions;
- an increase in orders from both our existing customers and new customers during the period; and
- a net increase of \$12.2 million of realized cash flow hedge gains from foreign currency forward contracts.

The increase was partially offset by lower non-recurring revenues, primarily due to decreases in EIS products sales and lower revenues from Smart Hands products as during the six months ended June 30, 2020, we waived certain Smart Hands service fees from the affected customers in order to restrict visits to our IBX facilities during the COVID-19 pandemic.

**Asia-Pacific Revenues.** During the six months ended June 30, 2020, Asia-Pacific revenue increased by 9% (10% on a constant currency basis). Growth in Asia-Pacific revenue was primarily due to:

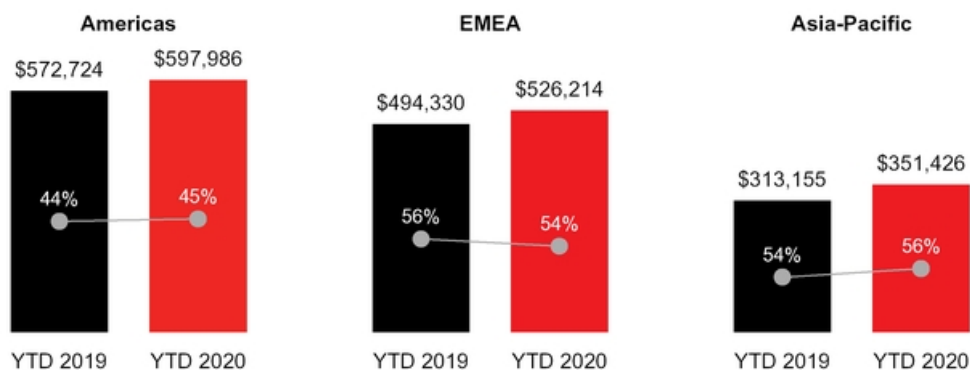
- approximately \$19.0 million of incremental revenues generated from our recently-opened IBX data centers or IBX data center expansions;
- higher non-recurring revenues, primarily due to increases in EIS products sales; and
- an increase in orders from both our existing customers and new customers during the period.

**Cost of Revenues.** Our cost of revenues for the six months ended June 30, 2020 and 2019 were split among the following geographic regions (dollars in thousands):

	Six Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 597,986	41%	\$ 572,724	41%	4%	6%
EMEA	526,214	36%	494,330	36%	6%	8%
Asia-Pacific	351,426	23%	313,155	23%	12%	14%
Total	\$ 1,475,626	100%	\$ 1,380,209	100%	7%	9%

**Cost of Revenues**

(dollars in thousands; percentages indicate expenses as a percentage of revenues)



**Americas Cost of Revenues.** During the six months ended June 30, 2020, Americas cost of revenues increased by 4% (6% on a constant currency basis). The increase in our Americas cost of revenues was primarily due to:

- approximately \$17.9 million of incremental cost of revenues from the Packet and Axtel acquisitions;
- \$7.9 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth and additional bonuses paid to IBX employees for supporting our business during the COVID-19 pandemic; and
- \$2.9 million of higher utilities cost driven by IBX data center expansions.

This increase was partially offset by:

- \$3.6 million of lower costs related to decreased EIS revenues, primarily in the U.S.

**EMEA Cost of Revenues.** During the six months ended June 30, 2020, EMEA cost of revenues increased by 6% (8% on a constant currency basis). The increase in our EMEA cost of revenues was primarily due to:

- \$18.3 million of higher depreciation expenses driven by IBX data center expansions in London and Frankfurt;
- \$11.2 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth and additional bonuses to IBX employees for supporting our business during the COVID-19 pandemic;
- \$7.8 million of higher consulting services and office expense, primarily due to the timing of spending and additional spending on personal protective equipment for our IBX employees in response to the COVID-19 pandemic;
- \$6.3 million of higher utilities costs driven by increased utility usage to support IBX data center expansions and utility price increases, primarily in Germany; and
- \$5.6 million of higher rent and facilities costs and repairs and maintenance expense.

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This increase was partially offset by:

- \$8.8 million of net decrease in other cost of revenue, primarily due to lower costs related to decreased EIS revenues in Germany, United Kingdom, Spain, the Netherlands, and Sweden; and
- \$8.3 million of lower other expenses due to legal claims from subcontractors as a result of a general contractor bankruptcy during the six months ended June 30, 2019.

**Asia-Pacific Cost of Revenues.** During the six months ended June 30, 2020, Asia-Pacific cost of revenues increased by 12% (14% on a constant currency basis). The increase in our Asia-Pacific cost of revenues was primarily due to:

- \$21.0 million of higher depreciation expense, primarily from IBX data center expansions in Singapore, Japan and Australia;
- \$7.6 million of higher utilities costs and rent and facility costs, primarily driven by expansions and higher utility usage in Hong Kong, Singapore, and Japan;
- \$4.1 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth and additional bonuses to IBX employees for supporting our business during the COVID-19 pandemic.; and
- \$5.4 million of higher costs from increased EIS revenues, primarily in Japan.

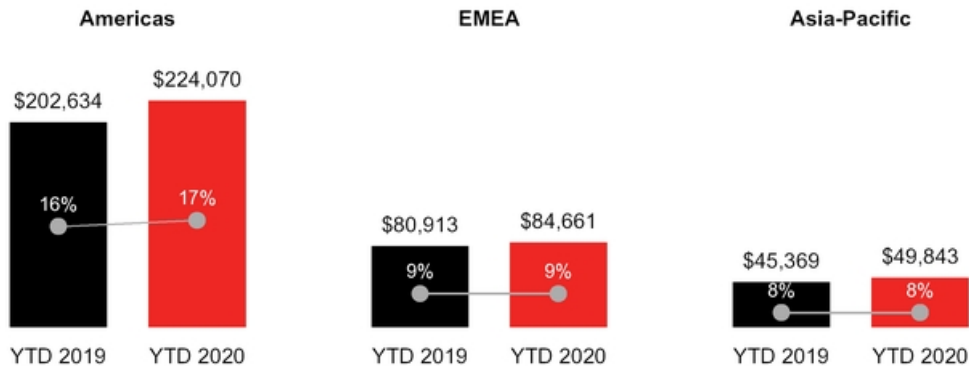
We expect Americas, EMEA and Asia-Pacific cost of revenues to increase as we continue to grow our business, including from the impacts of acquisitions.

**Sales and Marketing Expenses.** Our sales and marketing expenses for the six months ended June 30, 2020 and 2019 were split among the following geographic regions (dollars in thousands):

	Six Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 224,070	62%	\$ 202,634	62%	11%	11%
EMEA	84,661	24%	80,913	24%	5%	6%
Asia-Pacific	49,843	14%	45,369	14%	10%	12%
Total	\$ 358,574	100%	\$ 328,916	100%	9%	10%

**Sales and Marketing Expenses**

(dollars in thousands; percentages indicate expenses as a percentage of revenues)



**Americas Sales and Marketing Expenses.** During the six months ended June 30, 2020, Americas sales and marketing expenses increased by 11% (and also 11% on a constant currency basis). The increase in our Americas sales and marketing expenses was primarily due to:

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- \$16.0 million of higher compensation costs, including sales compensation, salaries and stock-based compensation, primarily due to additional stock-based compensation expenses incurred related to the Packet acquisition and headcount growth; and
- \$3.4 million of higher advertising and promotions expenses.

This increase was partially offset by lower travel and entertainment expenses resulting from travel restrictions imposed in response to the COVID-19 pandemic.

**EMEA Sales and Marketing Expenses.** During the six months ended June 30, 2020, EMEA sales and marketing expenses increased by 5% (6% on a constant currency basis). The increase in our Americas sales and marketing expenses was primarily due to:

- \$5.2 million of higher compensation costs, including sales compensation, salaries, and stock-based compensation due to headcount growth;
- \$3.7 million of higher bad debt expense, primarily driven by the impacts of the COVID-19 pandemic.

This increase was partially offset by \$3.8 million of lower amortization expense driven by certain intangibles being fully amortized in the current year.

**Asia-Pacific Sales and Marketing Expenses.** During the six months ended June 30, 2020, Asia-Pacific sales and marketing expenses increased by 10% (6% on a constant currency basis). The increase in our Asia-Pacific sales and marketing expenses was primarily due to:

- \$3.6 million increase of higher compensation costs, including sales compensation, salaries, and stock-based compensation due to headcount growth.

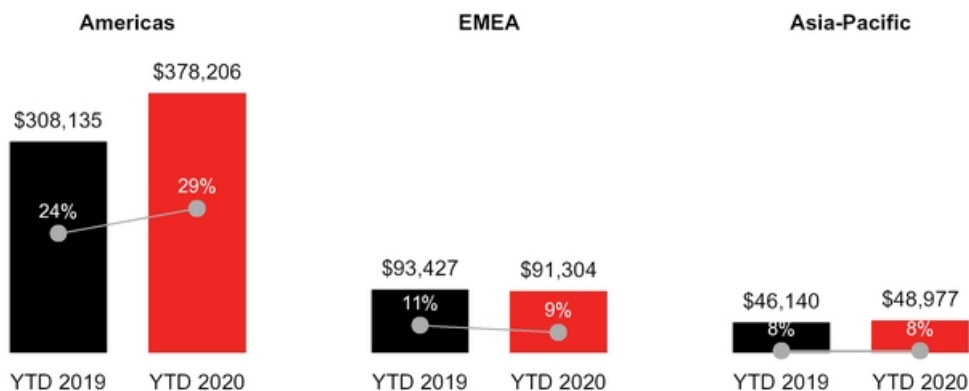
We anticipate that we will continue to invest in Americas, EMEA and Asia-Pacific sales and marketing initiatives and expect our Americas, EMEA and Asia-Pacific sales and marketing expenses to increase as we grow our business. Additionally, given that certain global sales and marketing functions are located within the U.S., we expect Americas sales and marketing expenses as a percentage of revenues to be higher than our other regions.

**General and Administrative Expenses.** Our general and administrative expenses for the six months ended June 30, 2020 and 2019 were split among the following geographic regions (dollars in thousands):

	Six Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 378,206	73%	\$ 308,135	69%	23 %	24 %
EMEA	91,304	18%	93,427	21%	(2)%	(2)%
Asia-Pacific	48,977	9%	46,140	10%	6 %	8 %
Total	<u>\$ 518,487</u>	<u>100%</u>	<u>\$ 447,702</u>	<u>100%</u>	16 %	17 %

**General and Administrative Expenses**

(dollars in thousands; percentages indicate expenses as a percentage of revenues)



**Americas General and Administrative Expenses.** During the six months ended June 30, 2020, Americas general and administrative expenses increased by 23% (24% on a constant currency basis). The increase in our Americas general and administrative expenses was primarily due to:

- \$41.0 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to additional stock-based compensation expense incurred related to the Packet acquisition, higher payroll taxes, higher corporate bonus payment and overall headcount growth;
- \$8.6 million of higher consulting expenses in support of our business growth;
- \$7.4 million of higher office expenses due to additional software and support services; and
- \$11.7 million of higher depreciation expense associated with the implementation of certain systems to support the integration and growth of our business.

**EMEA General and Administrative Expenses.** During the six months ended June 30, 2020, EMEA general and administrative expenses decreased by 2% (and also 2% on a constant currency basis). The decrease in our EMEA general and administrative expenses was primarily due to:

- \$6.3 million of lower other operating expenses, primarily due to the favorable determination of a legal claim during the six months ended June 30, 2020; and
- \$2.2 million of lower travel and consulting expense resulting from travel restrictions imposed in response to the COVID-19 pandemic.

This decrease was partially offset by:

- \$6.4 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth.

**Asia-Pacific General and Administrative Expenses.** During the six months ended June 30, 2020, Asia-Pacific general and administrative expenses increased by 6% (8% on a constant currency basis). The increase in our Asia-Pacific general and administrative expense was primarily due to:

- \$2.3 million of higher compensation costs, including salaries, bonuses and stock-based compensation, primarily due to headcount growth.

Going forward, although we are carefully monitoring our spending, we expect Americas, EMEA and Asia-Pacific general and administrative expenses to increase as we continue to further scale our operations to support our growth, including investments in our back office systems and investments to maintain our qualification for taxation as a REIT and to integrate recent acquisitions. Additionally, given that our corporate headquarters is located within the U.S., we expect Americas general and administrative expenses as a percentage of revenues to be higher than our other regions.

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**Transaction costs.** During the six months ended June 30, 2020, we recorded transaction costs totaling \$25.1 million, primarily related to costs incurred in connection with the Packet and Axtel acquisitions and formation of the Asia Pacific Joint Venture. During the six months ended June 30, 2019, we recorded transaction costs totaling \$5.2 million, primarily related to costs incurred in connection with the formation of the EMEA Joint Venture.

**Impairment Charge.** During the six months ended June 30, 2020, we did not record any impairment charges. During the six months ended June 30, 2019, we recorded impairment charges of \$14.8 million in the Americas region primarily as a result of the fair value adjustment for the New York 12 data center, which was classified as a held for sale asset.

**Gain or Loss on Asset Sales.** During the six months ended June 30, 2020, we did not record a significant amount of loss on asset sales. During the six months ended June 30, 2019, we did not record any gain or loss on asset sales.

**Income from Operations.** Our income from operations for the six months ended June 30, 2020 and 2019 was split among the following geographic regions (dollars in thousands):

	Six Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 105,731	20%	\$ 189,206	33%	(44)%	(41)%
EMEA	264,158	49%	211,562	37%	25 %	27 %
Asia-Pacific	166,083	31%	170,521	30%	(3)%	— %
Total	<u>\$ 535,972</u>	<u>100%</u>	<u>\$ 571,289</u>	<u>100%</u>	<u>(6)%</u>	<u>(5)%</u>

**Americas Income from Operations.** During the six months ended June 30, 2020, Americas income from operations decreased by 44% (41% on a constant currency basis). The decrease in our Americas income from operations was primarily due to higher operating expenses as a percentage of revenues. Namely, a large increase in general and administrative expenses was primarily driven by higher compensation costs and consulting expenses, which were in part related to the Packet and Axtel acquisitions, along with higher office expenses and depreciation expense.

**EMEA Income from Operations.** During the six months ended June 30, 2020, EMEA income from operations increased by 25% (27% on a constant currency basis). The increase in our EMEA income from operations was primarily due to higher revenues as a result of our IBX data center expansion activity and organic growth, as described above, as well as lower operating expenses as a percentage of revenues.

**Asia-Pacific Income from Operations.** During the six months ended June 30, 2020, Asia-Pacific income from operations decreased by 3% (0% on a constant currency basis). The decrease in our Asia-Pacific income from operations was primarily due to higher cost of revenues as a percentage of revenue, primarily due to an increase in depreciation expense, rent and facility costs, and utilities costs due to IBX expansion activity.

**Interest Income.** Interest income was \$6.0 million and \$12.0 million, respectively, for the six months ended June 30, 2020 and 2019. The average annualized yield for the six months ended June 30, 2020 was 0.67% versus 1.69% for the six months ended June 30, 2019.

**Interest Expense.** Interest expense decreased to \$215.8 million for the six months ended June 30, 2020 from \$243.4 million for the six months ended June 30, 2019, primarily attributable to the tender and redemption of the 5.375% Senior Notes due 2022, 5.375% Senior Notes due 2023, and 5.750% Senior Notes due 2025, partially offset by the issuance of the 2.625% Senior Notes due 2024, 2.900% Senior Notes due 2026 and 3.200% Senior Notes due 2029. We capitalized \$12.9 million and \$15.8 million of interest expense to construction in progress for the six months ended June 30, 2020 and 2019, respectively.

**Other Income.** We recorded net other income of \$9.4 million and \$12.0 million, respectively, for the six months ended June 30, 2020 and June 30, 2019, which was primarily due to foreign currency exchange gains and losses, net of the impact from derivative instruments used to manage foreign exchange risks.

**Loss on debt extinguishment.** We recorded loss on debt extinguishment of \$8.3 million during the six months ended June 30, 2020, due to the redemption of the remaining balance of the 5.375% Senior Notes due 2022 and termination of 364-day term loan facilities. During the six months ended June 30, 2019, we did not record a significant amount of loss on debt extinguishment.

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**Income Taxes.** We operate as a REIT for U.S. federal income tax purposes. As a REIT, we are generally not subject to U.S. federal and state income taxes on our taxable income distributed to stockholders. We intend to distribute or have distributed the entire taxable income generated by the operations of our REIT and QRSs for the tax years ending December 31, 2020 and December 31, 2019, respectively. As such, other than tax on built-in-gains recognized and foreign withholding taxes, as applicable, no provision for U.S. federal income taxes for the REIT and QRSs has been included in the accompanying condensed consolidated financial statements for the six months ended June 30, 2020 and 2019.

We have made TRS elections for some of our subsidiaries in and outside the U.S. In general, a TRS may provide services that may otherwise be considered impermissible for REITs to provide and may hold assets that may not be REIT compliant. U.S. income taxes for the TRS entities located in the U.S. and foreign income taxes for our foreign operations regardless of whether the foreign operations are operated as QRSs or TRSs have been accrued, as necessary, for the six months ended June 30, 2020 and 2019.

For the six months ended June 30, 2020 and 2019, we recorded \$74.9 million and \$89.9 million of income tax expense, respectively. Our effective tax rates were 22.9% and 25.6%, for the six months ended June 30, 2020 and 2019, respectively.

**Adjusted EBITDA.** Adjusted EBITDA is a key factor in how we assess the operating performance of our segments and develop regional growth strategies such as IBX data center expansion decisions. We define adjusted EBITDA as income or loss from operations excluding depreciation, amortization, accretion, stock-based compensation expense, restructuring charges, impairment charges, transaction costs and gain on asset sales. See "Non-GAAP Financial Measures" below for more information about adjusted EBITDA and a reconciliation of adjusted EBITDA to income or loss from operations. Our adjusted EBITDA for the six months ended June 30, 2020 and 2019 was split among the following geographic regions (dollars in thousands):

	Six Months Ended June 30,				% Change	
	2020	%	2019	%	Actual	Constant Currency
Americas	\$ 595,720	42%	\$ 616,890	46%	(3)%	(2)%
EMEA	473,755	34%	408,717	31%	16 %	18 %
Asia-Pacific	334,776	24%	311,558	23%	7 %	10 %
Total	\$ 1,404,251	100%	\$ 1,337,165	100%	5 %	7 %

**Americas Adjusted EBITDA.** During the six months ended June 30, 2020, Americas adjusted EBITDA decreased by 3% (2% on a constant currency basis). The decrease in our Americas adjusted EBITDA was primarily due to the increase in cash compensation expenses, consulting expenses and office expenses.

**EMEA Adjusted EBITDA.** During the six months ended June 30, 2020, EMEA adjusted EBITDA increased by 16% (18% on a constant currency basis). The increase in our EMEA adjusted EBITDA was primarily due to higher revenues as a result of our IBX data center expansion activity and organic growth, as described above, as well as a decrease in general and administrative expense.

**Asia-Pacific Adjusted EBITDA.** During the six months ended June 30, 2020, Asia-Pacific adjusted EBITDA increased by 7% (10% on a constant currency basis). The increase in our Asia-Pacific adjusted EBITDA was primarily due to higher revenues as a result of our IBX data center expansion activity and organic growth as described above.

## Non-GAAP Financial Measures

We provide all information required in accordance with 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 to evaluate our operations.

Non-GAAP financial measures are not a substitute for financial information prepared in accordance with GAAP. Non-GAAP financial measures should not be considered in isolation, but should be considered together with the most directly comparable GAAP financial measures and the reconciliation of the non-GAAP financial measures to the most directly comparable GAAP financial measures. We have presented such non-GAAP financial measures to provide investors with an additional tool to evaluate our operating results in a manner that focuses on what management believes to be our core, ongoing business operations. We believe that the inclusion of these non-GAAP financial measures provides consistency and comparability with past reports and provides a better understanding of the overall

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performance of the business and ability to perform in subsequent periods. We believe that if we did not provide such non-GAAP financial information, investors would not have all the necessary data to analyze Equinix effectively.

Investors should note 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 those of other companies. Investors should therefore exercise caution when comparing non-GAAP financial measures used by us to similarly titled non-GAAP financial measures of other companies.

Our primary non-GAAP financial measures, adjusted EBITDA and adjusted funds from operations ("AFFO"), 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 an IBX data center do not recur with respect to such data center, although we may incur initial construction costs in future periods with respect to additional IBX data centers, and future capital expenditures remain minor relative to our initial investment. This is a trend we expect to continue. In addition, depreciation is also based on the estimated useful lives of our IBX data centers. These estimates could vary from actual performance of the asset, are based on historical costs incurred to build out our IBX data centers and are not indicative of current or expected future capital expenditures. Therefore, we exclude depreciation from our operating results when evaluating our operations.

In addition, in presenting adjusted EBITDA and AFFO, we exclude amortization expense related to acquired intangible assets. Amortization expense is significantly affected by the timing and magnitude of our acquisitions and these charges may vary in amount from period to period. We exclude amortization expense to facilitate a more meaningful evaluation of our current operating performance and comparisons to our prior periods. We exclude accretion expense, both as it relates to asset retirement obligations as well as accrued restructuring charge liabilities, as these expenses represent costs which we believe are not meaningful in evaluating our current operations. We exclude stock-based compensation expense, as it can vary significantly from period to period based on share price, the timing, size and nature of equity awards. As such, we, and many investors and analysts, exclude stock-based compensation expense to compare our operating results with those of other companies. We also exclude restructuring charges. 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 impairment charges related to certain long-lived assets. The impairment charges are related to expense recognized whenever events or changes in circumstances indicate that the carrying amount of long-lived assets are not recoverable. We also exclude gain or loss on asset sales as it represents profit or loss that is not meaningful in evaluating the current or future operating performance. Finally, we exclude transaction costs from AFFO and adjusted EBITDA to allow more comparable comparisons of our financial results to our historical operations. The transaction costs relate to costs we incur in connection with business combinations and the formation of joint ventures, including advisory, legal, accounting, valuation, and other professional or consulting fees. Such charges generally are not relevant to assessing the long-term performance of the company. In addition, the frequency and amount of such charges vary significantly based on the size and timing of the transactions. Management believes items such as restructuring charges, impairment charges, gain or loss on asset sales and transaction costs are non-core transactions; however, these types of costs may occur in future periods.

### **Adjusted EBITDA**

We define adjusted EBITDA as income from operations excluding depreciation, amortization, accretion, stock-based compensation expense, restructuring charges, impairment charges, transaction costs, and gain or loss on asset sales as presented below (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Income from operations	\$ 282,488	\$ 291,781	\$ 535,972	\$ 571,289
Depreciation, amortization, and accretion expense	348,434	320,550	685,865	635,255
Stock-based compensation expense	75,844	61,519	156,410	110,542
Transaction costs	13,617	2,774	25,147	5,245
Impairment charges	—	386	—	14,834
(Gain) loss on asset sales	(342)	—	857	—
Adjusted EBITDA	\$ 720,041	\$ 677,010	\$ 1,404,251	\$ 1,337,165



Our adjusted EBITDA results have improved each year in total dollars 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 also discussed earlier in "Overview".

***Funds from Operations ("FFO") and AFFO***

We use FFO and AFFO, which are non-GAAP financial measures commonly used in the REIT industry. FFO is calculated in accordance with the standards established by the National Association of Real Estate Investment Trusts. FFO represents net income (loss), excluding gain (loss) from the disposition of real estate assets, depreciation and amortization on real estate assets and adjustments for unconsolidated joint ventures' and non-controlling interests' share of these items.

In presenting AFFO, we exclude certain items that we believe are not good indicators of our current or future operating performance. AFFO represents FFO excluding depreciation and amortization expense on non-real estate assets, accretion, stock-based compensation, restructuring charges, impairment charges, transaction costs, an installation revenue adjustment, a straight-line rent expense adjustment, a contract cost adjustment, amortization of deferred financing costs and debt discounts and premiums, gain (loss) on debt extinguishment, an income tax expense adjustment, recurring capital expenditures, net income (loss) from discontinued operations, net of tax, and adjustments from FFO to AFFO for unconsolidated joint ventures' and noncontrolling interests' share of these items. The adjustments for installation revenue, straight-line rent expense and contract costs are intended to isolate the cash activity included within the straight-lined or amortized results in the consolidated statement of operations. We exclude the amortization of deferred financing costs and debt discounts and premiums as these expenses relate to the initial costs incurred in connection with debt financings that have no current or future cash obligations. We exclude gain (loss) on debt extinguishment since it generally represents the write-off of initial costs incurred in connection with debt financings or a cost that is incurred to reduce future interest costs and is not a good indicator of our current or future operating performance. We include an income tax expense adjustment, which represents the non-cash tax impact due to changes in valuation allowances, uncertain tax positions and deferred taxes that do not relate to current period's operations. We deduct recurring capital expenditures, which represent expenditures to extend the useful life of its IBX data centers or other assets that are required to support current revenues. We also exclude net income (loss) from discontinued operations, net of tax, which represents results that may not recur and are not a good indicator of our current future operating performance.

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Our FFO and AFFO were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Net income	\$ 133,350	\$ 143,852	\$ 252,307	\$ 261,599
Net (income) loss attributable to non-controlling interests	(46)	(325)	(211)	6
Net income attributable to Equinix	133,304	143,527	252,096	261,605
Adjustments:				
Real estate depreciation	222,613	209,103	444,400	414,752
Loss on disposition of real estate property	376	343	2,882	2,689
Adjustments for FFO from unconsolidated joint ventures	653	—	1,322	—
FFO attributable to common shareholders	\$ 356,946	\$ 352,973	\$ 700,700	\$ 679,046
	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
FFO attributable to common shareholders	\$ 356,946	\$ 352,973	\$ 700,700	\$ 679,046
Adjustments:				
Installation revenue adjustment	3,649	1,492	168	2,521
Straight-line rent expense adjustment	2,395	2,300	4,201	4,678
Contract cost adjustment	(5,307)	(12,348)	(15,741)	(19,126)
Amortization of deferred financing costs and debt discounts and premiums	4,444	3,238	7,904	6,233
Stock-based compensation expense	75,844	61,519	156,410	110,542
Non-real estate depreciation expense	76,618	60,904	142,209	118,898
Amortization expense	49,362	49,217	97,853	98,752
Accretion expense	(159)	1,326	1,403	2,853
Recurring capital expenditures	(29,996)	(36,726)	(47,864)	(57,673)
Loss on debt extinguishment	1,868	—	8,309	382
Transaction costs	13,617	2,774	25,147	5,245
Impairment charges	—	386	—	14,834
Income tax expense adjustment	8,070	10,592	10,903	18,582
Adjustments for AFFO from unconsolidated joint ventures	442	—	896	—
AFFO attributable to common shareholders	\$ 557,793	\$ 497,647	\$ 1,092,498	\$ 985,767

Our AFFO results have improved due to the improved operating results discussed earlier in "Results of Operations," as well as due to the nature of our business model which consists of a recurring revenue stream and a cost structure which has a large base that is fixed in nature as discussed earlier in "Overview."

### **Constant Currency Presentation**

Our revenues and certain operating expenses (cost of revenues, sales and marketing and general and administrative expenses) from our international operations have represented and will continue to represent a significant portion of our total revenues and certain operating expenses. As a result, our revenues and certain operating expenses have been and will continue to be affected by changes in the U.S. dollar against major international currencies. During the three and six months ended June 30, 2020 as compared to the same period in 2019, the U.S. dollar was stronger relative to the Brazilian real, Euro, British Pound, Singapore dollar and Australian dollar, which resulted in an unfavorable foreign currency impact on revenue, operating income and adjusted EBITDA, and a favorable foreign currency impact on operating expenses. In order to provide a framework for assessing how each of our business segments performed excluding the impact of foreign currency fluctuations, we present period-over-period percentage changes in our revenues and certain operating expenses on a constant currency basis in addition to the historical amounts as reported. Our constant currency presentation excludes the impact of our foreign currency cash flow hedging activities. Presenting constant currency results of operations is a non-GAAP financial measure and is not meant to be considered in isolation or as an alternative to GAAP results of operations. However, we have presented this non-GAAP financial measure to provide investors with an additional tool to evaluate our operating results. To present this information, our current period revenues and certain operating expenses from entities reporting in currencies other than the U.S. dollar are converted into U.S. dollars at constant exchange rates rather than the actual exchange rates in effect during the respective periods (i.e. average rates in effect for the six months ended June 30, 2019 are used as exchange rates for the six months ended June 30, 2020 when comparing the six months ended June 30, 2020 with the six months ended June 30, 2019).

### **Liquidity and Capital Resources**

As of June 30, 2020, our total indebtedness was comprised of debt and financing obligations totaling \$14.2 billion consisting of:

- \$11.1 billion of principal from our senior notes;
- Approximately \$1,760.8 million from our finance lease liabilities; and
- \$1,297.6 million of principal from our mortgage and loans payable (gross of debt issuance cost, debt discount, plus mortgage premium).

During the six months ended June 30, 2020, we completed the following significant financing activities:

- Issued and sold 162,530 shares of common stock under our ATM Program, for proceeds of approximately \$101.8 million, net of payment of commissions and other offering expenses;
- Borrowed and repaid \$250.0 million under our revolving credit facility; and
- Redeemed the remaining \$343.7 million principal amount of our 5.375% Senior Notes due 2022.
- Issued and sold 2,587,500 shares of common stock for net proceeds of approximately \$1,683.1 million;
- Borrowed and repaid \$391.0 million as well as €100.0 million or \$109.8 million at the exchange rate in effect on the date of borrowing under the 364-day term loan facilities, which were also terminated in June 2020; and
- Issued \$500.0 million of 1.250% Senior Notes due 2025, \$500.0 million of \$1.800% Senior Notes due 2027, \$1.1 billion of 2.150% of Senior Notes due 2030 and \$500.0 million of \$3.000% Senior Notes due 2050.

As of June 30, 2020, we had \$4.8 billion of cash, cash equivalents and short-term investments. After giving effect to the redemption of €750.0 million of 2.875% Senior Notes due 2024 and \$1.1 billion of 5.875% of Senior Notes due 2026 on July 8, 2020, our cash, cash equivalents and short-term investments would have been approximately \$2.7 billion. In addition to our cash and investment portfolio, we had approximately \$1.9 billion of additional liquidity available to us from our \$2.0 billion revolving facility, \$197.5 million of shares of our common stock available for sale under our ATM Program and general access to both public and private debt and equity capital markets. We expect to enter into a new "at-the-market" stock offering program once we have sold all shares available under our current ATM Program.

Customer collections are our primary source of cash, in addition to any further financing activity we may pursue. We believe we have a strong customer base and have continued to experience relatively strong collections.

We believe we have sufficient cash, coupled with anticipated cash generated from operating activities and external financing sources, to meet our operating requirements, including repayment of the current portion of our debt as it becomes due, distribution of dividends and completion of our publicly-announced acquisition and expansion projects. We also believe that our financial resources will allow us to manage the anticipated impact of COVID-19 on our business.

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operations for the foreseeable future, which could include reductions in revenue and delays in payments from customers and partners.

As we continue to grow, 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 and joint ventures. We may elect to access the equity or debt markets from time to time opportunistically, particularly if financing is available on attractive terms. We will continue to evaluate our financial position in light of future developments, particularly those relating to the COVID-19 pandemic.

### **Sources and Uses of Cash**

	Six Months Ended June 30,	
	2020	2019
	(dollars in thousands)	
Net cash provided by operating activities	\$ 1,091,516	\$ 964,064
Net cash used in investing activities	(1,483,985)	(901,559)
Net cash provided by financing activities	3,325,873	946,772

#### *Operating Activities*

Cash provided by our operations is generated by colocation, interconnection, managed infrastructure and other revenues. Our primary use of cash from our operating activities includes compensation and related costs, interest payments, other general corporate expenditures and taxes. Net cash provided by operating activities increased from the six months ended June 30, 2019 to the six months ended June 30, 2020 primarily due to improved operating results offset by increases in cash paid for cost of revenues, operating expenses and income taxes.

#### *Investing Activities*

The net cash used in investing activities for the six months ended June 30, 2020 was primarily due to capital expenditures of \$882.9 million as a result of our expansion activity, purchases of real estate of \$82.6 million, business acquisitions of Packet and Axtel for \$478.2 million, and purchases of investments of \$52.4 million, partially offset by proceeds from sales of investments of \$12.1 million. The net cash used in investing activities for the six months ended June 30, 2019 was primarily due to capital expenditures of \$808.1 million as a result of our expansion activity, purchases of real estate of \$47.4 million, the AM11 data center acquisition of \$34.1 million, and purchases of certificates of deposit of \$20.8 million, partially offset by proceeds from sales of investments of \$8.9 million.

We anticipate our IBX data center expansion construction activity will be similar or increase from our 2019 levels. If the opportunity to expand is greater than planned and we have sufficient funding to pursue such expansion opportunities, we may further increase the level of capital expenditure to support this growth as well as pursue additional business and real estate acquisitions or joint ventures.

#### *Financing Activities*

The net cash used in financing activities for the six months ended June 30, 2020 was primarily due to:

- the issuance of \$2.6 billion in Senior Notes due 2025, 2027, 2030, and 2050;
- the sale and issuance of 2,587,500 shares of common stock in a public offering for net proceeds of approximately \$1,683.1 million;
- borrowings under the revolving credit facility of \$250.0 million and the 364-Day term loan facilities of \$500.8 million;
- the sale of 162,530 shares of common stock under the ATM Program, for net proceeds of \$101.8 million; and
- proceeds from the employee stock purchase plan of \$30.4 million.

The proceeds were offset by:

- dividend distributions of \$469.5 million;
- the repayment of senior notes of \$493.7 million;
- repayments of finance lease liabilities of \$42.7 million;
- repayments of mortgage and loans payable of \$789.2 million; and

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- debt issuance costs paid of \$26.3 million.

The net cash provided by financing activities for the six months ended June 30, 2019 was primarily due to:

- the sale of 2,985,575 shares of common stock in a public equity offering for net proceeds of approximately \$1,213.4 million;
- the sale of 722,361 shares of common stock under the ATM Program, for net proceeds of \$348.2 million; and
- proceeds from employee awards of \$27.6 million.

The proceeds were partially offset by:

- dividend distributions of \$413.1 million;
- the repayment of senior notes of \$150.0 million;
- repayments of finance lease liabilities of \$43.1 million; and
- repayments of mortgage and loans payable of \$36.2 million.

### Contractual Obligations and Off-Balance-Sheet Arrangements

We lease a majority of our IBX data centers and certain equipment under long-term lease agreements. The following represents our debt maturities, financings, leases and other contractual commitments as of June 30, 2020 (in thousands):

	2020 (6 months remaining)	2021	2022	2023	2024	Thereafter	Total
Term loans and other loans payable <sup>(1)</sup>	\$ 37,922	\$ 75,580	\$ 1,148,837	\$ 6,510	\$ 6,031	\$ 22,685	\$ 1,297,565
Senior notes <sup>(1)</sup>	2,092,775	150,000	—	—	1,000,000	7,897,400	11,140,175
Interest <sup>(2)</sup>	164,875	294,775	286,012	268,853	268,663	1,042,869	2,326,047
Finance leases <sup>(3)</sup>	95,454	205,435	202,461	197,071	194,842	1,975,440	2,870,703
Operating leases <sup>(3)</sup>	87,527	192,368	184,049	168,561	156,627	1,094,015	1,883,147
Other contractual commitments <sup>(4)</sup>	1,164,651	527,237	122,688	57,029	40,821	304,884	2,217,310
Asset retirement obligations <sup>(5)</sup>	1,728	4,110	13,081	5,618	7,139	73,380	105,056
	<u>\$ 3,644,932</u>	<u>\$ 1,449,505</u>	<u>\$ 1,957,128</u>	<u>\$ 703,642</u>	<u>\$ 1,674,123</u>	<u>\$ 12,410,673</u>	<u>\$ 21,840,003</u>

(1) Represents principal and unamortized mortgage premium only.

(2) Represents interest on mortgage payable, loans payable, senior notes and term loans based on their respective interest rates as of June 30, 2020, as well as the credit facility fee for the revolving credit facility.

(3) Represents lease payments under finance and operating lease arrangements, including renewal options that are certain to be exercised.

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

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

In connection with certain of our leases and other contracts requiring deposits, we entered into 43 irrevocable letters of credit totaling \$72.4 million under the revolving credit facility. These letters of credit were provided in lieu of cash deposits under certain lease obligations. If beneficiaries of the letters of credit were to draw down on these letters of credit triggered by an event of default under the lease, we would be required to fund these letters of credit either through cash collateral or borrowing under the revolving credit facility. These contingent commitments are not reflected in the table above.

We had accrued liabilities related to uncertain tax positions totaling approximately \$144.5 million as of June 30, 2020. These liabilities, which are reflected on our balance sheet, are not reflected in the table above since it is unclear when these liabilities will be paid.

As of June 30, 2020, we were contractually committed for \$1,073.1 million of unaccrued capital expenditures, primarily for IBX data center 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

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installation. This amount, which is expected to be paid during the remainder of 2020 and thereafter, is reflected in the table above as "other contractual commitments."

We had other non-capital purchase commitments in place as of June 30, 2020, such as commitments to purchase power in select locations and other open purchase orders, which contractually bind us for goods or services to be delivered or provided during 2020 and beyond. Such other purchase commitments as of June 30, 2020, which total \$1,144.2 million, are also reflected in the table above as "other contractual commitments."

In connection with the EMEA Joint Venture which closed in October 2019, we agreed to make future equity contributions to the EMEA Joint Venture. As of June 30, 2020, we had future equity contribution commitments of €12.3 million and £10.3 million, or \$26.5 million in total at the exchange rate in effect on June 30, 2020, to fund the EMEA Joint Venture's future development over the next 3 years, which are not reflected in the table above.

Additionally, we entered into lease agreements in various locations for total lease commitments of approximately \$705.6 million, excluding potential lease renewals. These lease agreements will commence between fiscal years 2020 and 2022 with lease terms of 1 to 49 years, which are not reflected in the table above.

### **Critical Accounting Policies and Estimates**

Our condensed consolidated financial statements and accompanying notes are prepared in accordance with U.S. GAAP. The preparation of our financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates the accounting policies, assumptions, estimates and judgments to ensure that our condensed consolidated financial statements are presented fairly and in accordance with U.S. 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. Critical accounting policies for Equinix that affect our more significant judgment and estimates used in the preparation of our condensed consolidated financial statements include accounting for income taxes, accounting for business combinations, accounting for impairment of goodwill and accounting for property, plant and equipment, which are discussed in more detail under the caption "Critical Accounting Policies and Estimates" in Management's Discussion and Analysis of Financial Condition and Results of Operations, set forth in Part II Item 7, of our Annual Report on Form 10-K for the year ended December 31, 2019.

### **Recent Accounting Pronouncements**

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

## **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

### **Market Risk**

There have been no significant changes to our exposure management and procedures in relation to our market risk, investment portfolio risk, interest rate risk, foreign currency risk and commodity price risk exposures and procedures during the six months ended June 30, 2020 as compared to the respective risk exposures and procedures disclosed in Quantitative and Qualitative Disclosures About Market Risk, set forth in Part II Item 7A, of our Annual Report on Form 10-K for the year ended December 31, 2019, other than factors discussed below.

The uncertainty that exists with respect to the economic impact of the COVID-19 pandemic introduced significant volatility in the financial markets. See Part II, Item 1A. Risk Factors for additional information regarding potential risks to our business, financial condition and operating results related to the COVID-19 pandemic.

### **Foreign Currency Risk**

To help manage the exposure to foreign currency exchange rate fluctuations, we have implemented a number of hedging programs, in particular (i) a cash flow hedging program to hedge the forecasted revenues and expenses in our EMEA region, (ii) a balance sheet hedging program to hedge the re-measurement of monetary assets and liabilities

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denominated in foreign currencies, and (iii) a net investment hedging program to hedge the long term investments in our foreign subsidiaries. Our hedging programs reduce, but do not entirely eliminate, the impact of currency exchange rate movements and its impact on the consolidated statements of operations.

We have entered into various foreign currency debt obligations. As of June 30, 2020, the total principal amount of foreign currency debt obligations was \$4.3 billion, including \$3.1 billion denominated in Euro, \$549.7 million denominated in British Pound, \$401.8 million denominated in Japanese Yen and \$266.8 million denominated in Swedish Krona. As of June 30, 2020, we have designated \$3.5 billion of the total principal amount of foreign currency debt obligations as net investment hedges against our net investments in foreign subsidiaries. For a net investment hedge, changes in the fair value of the hedging instrument designated as a net investment hedge are recorded as a component of other comprehensive income (loss) in the consolidated balance sheets. Fluctuations in the exchange rates between these foreign currencies and the U.S. Dollar will impact the amount of U.S. Dollars that we will require to settle the foreign currency debt obligations at maturity. If the U.S. Dollar would have been weaker or stronger by 10% in comparison to these foreign currencies as of June 30, 2020, we estimate our obligation to cash settle the principal of these foreign currency debt obligations in U.S. Dollars would have increased or decreased by approximately \$478.7 million and \$391.7 million, respectively.

We also entered into cross-currency interest rate swaps where we receive a fixed amount of U.S. Dollars and pay a fixed amount of Euros. As of June 30, 2020, U.S. Dollar to Euro cross-currency interest rate swap contracts with a total notional amount of \$1,597.0 million were outstanding. The cross-currency interest rate swaps are designated as hedges of our net investment in European operations and changes in the fair value of these swaps are recorded as a component of accumulated other comprehensive income (loss) in the condensed consolidated balance sheet. If the U.S. Dollar weakened or strengthened by 10% in comparison to Euro, we estimate our obligation to cash settle these hedges would have increased or decreased by approximately \$195.9 million and \$160.3 million, respectively.

The U.S. Dollar strengthened relative to certain of the currencies of the foreign countries in which we operate during the six months ended June 30, 2020. This has impacted our condensed consolidated financial position and results of operations during this period, including the amount of revenues that we reported. Continued strengthening or weakening of the U.S. Dollar will continue to impact us in future periods.

With the existing cash flow hedges in place, a hypothetical additional 10% strengthening of the U.S. Dollar for the six months ended June 30, 2020 would have resulted in a reduction of our revenues and operating expenses including depreciation and amortization expense by approximately \$82.0 million and \$80.4 million, respectively.

With the existing cash flow hedges in place, a hypothetical additional 10% weakening of the U.S. Dollar for the six months ended June 30, 2020 would have resulted in an increase of our revenues and operating expenses including depreciation and amortization expense by approximately \$100.1 million and \$94.8 million, respectively.

### **Interest Rate Risk**

We are exposed to interest rate risk related to our outstanding debt. An immediate increase or decrease in current interest rates from their position as of June 30, 2020 would not have a material impact on our interest expense due to the fixed coupon rate on the majority of our debt obligations. However, the interest expense associated with our senior credit facility and term loans that bear interest at variable rates could be affected. For every 100-basis point increase or decrease in interest rates, our annual interest expense could increase by approximately \$10.9 million or decrease by approximately \$0.8 million based on the total balance of our term loan borrowings as of June 30, 2020. As of June 30, 2020, we had not employed any interest rate derivative products to hedge our variable rate debt obligations. However, we may enter into interest rate hedging agreements in the future to mitigate our exposure to interest rate risk.

We periodically enter into interest rate locks to hedge the interest rate exposure created by anticipated fixed rate debt issuances, which are designated as cash flow hedges. When interest rate locks are settled, any accumulated gain or loss included as a component of other comprehensive income (loss) will be amortized to interest expense over the life of the related debt. We expect gains or losses in our interest rate locks to offset the losses and gains in the financial instruments they hedge.

### **Item 4. Controls and Procedures**

(a) **Evaluation of Disclosure Controls and Procedures.** Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation, pursuant to Rule 13a-15 promulgated under

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the Securities Exchange Act of 1934, as amended (the "Exchange Act"), of the effectiveness of our "disclosure controls and procedures" as of the end of the period covered by this quarterly report. Based on this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures were effective as of the end of the period covered by this quarterly report.

(b) **Changes in Internal Control over Financial Reporting.** There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the six months ended June 30, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

As a result of the COVID-19 pandemic, our established business continuity plans were activated in order to mitigate the impact to the control environment, including our global workforce shifting to a primarily work from home environment beginning in March 2020. While pre-existing controls were not specifically designed to operate in a work from home operating environment, we believe that our internal controls over financial reporting continue to be effective.

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



## PART II - OTHER INFORMATION

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### Item 1. Legal Proceedings

The following is a description of reportable legal proceedings, including those involving governmental authorities under federal, state and local laws regulating the discharge of materials into the environment.

In March 2019, charges were brought by the Public Prosecutor in Milan, Italy against Equinix (Italia) S.r.l. and Eric Schwartz, at that time one of the directors of Equinix (Italia) S.r.l., following the discovery of levels of copper in ground water in excess of those permitted by law and alleged to have been released by Equinix into the water supply. We determined that the copper levels detected had been misinterpreted by the Public Prosecutor's office, which had multiplied the findings tenfold. On March 13, 2019, we asked for an initial extension to file our defense and requested that the charges against both Equinix and Mr. Schwartz be dropped on the grounds that the levels of copper found were in fact less than double the permitted amounts. The Public Prosecutor accepted that the number it originally used was incorrect, but did not agree to drop the charges and has requested a trial date. Our defense was filed April 15, 2019. A trial date was set for March 6, 2020, but the hearing was cancelled due to the COVID-19 pandemic. It is likely that the hearing will take place in October 2020 at the earliest, but this may be subject to further change. Our external counsel has engaged with the prosecutor and agreed to a plea bargain for Mr. Schwartz comprising of payment of an amount between €12,700 and €25,000, plus a fine of €2,700. This arrangement must be approved by the Court. The maximum fine for Equinix relating to this matter is €350,000.

We have recently completed adoption of a formal compliance program pursuant to Italian Legislative Decree No. 231/2001 ("Decree 231"), which we expect will reduce our exposure to fines and penalties in a Court verdict by 50%. After adoption of Decree 231, the exposure for Equinix would be effectively reduced to €175,000.

While it is not possible to accurately predict the final outcome of this pending Court proceeding, if it is decided adversely to Equinix, we expect there would be no material effect on our consolidated financial position. Nevertheless, this proceeding is reported pursuant to Securities and Exchange Commission regulations.

### Item 1A. Risk Factors

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

#### **The COVID-19 pandemic could have a negative effect on our business, results of operations and financial condition.**

We have continuously monitored our global operations as the COVID-19 pandemic has spread across the globe and have implemented procedures focusing on the health and safety of our employees, customers, partners and communities, the continuity of our business offerings and compliance with governmental regulations and local public health guidance and ordinances. We have activated our business continuity and pandemic plans and while our business operations have continued without interruption and our IBX data centers have remained fully operational to date, we cannot guarantee our business operations or our IBX data centers will not be negatively impacted in the future. Our IBX data centers have been designated "essential businesses" or "critical infrastructure" for purposes of remaining open during the COVID-19 pandemic in all of the jurisdictions that have published these exemptions but not all jurisdictions have created such designations. Any change in these classifications could cause operational disruptions or closures of the affected IBX data centers.

We have implemented processes to limit and schedule access to certain IBX data centers as well as implemented social distancing and hygiene protocols in response to the growing number of suspected and confirmed COVID-19 cases. These proactive actions we have taken or may take in the future and any restrictions imposed by the government could result in business delays, operational disruption and customer dissatisfaction. Employee illnesses resulting from the pandemic could result in further inefficiencies or delays and a suspected or confirmed case in an IBX data center could require temporary closure of the affected IBX data center for cleaning. Any closure of an IBX data center or limitation of customer access could cause customer dissatisfaction if customers are unable to access their equipment within the IBX data center. We also have service level agreements which could be affected if we are required to close an IBX data center for any reason.

Preventative measures instituted by governments and businesses to mitigate the spread of COVID-19, including travel restrictions, social distancing requirements, shelter in place orders, and quarantines, have negatively impacted the global economy and may adversely impact us, our customers and vendors. Some of our customers have been negatively impacted by the COVID-19 pandemic which could affect our revenues. Certain customers have requested revised payment terms and more customers could potentially request such terms. If such an increase in requests for revised payment terms occurs, some delays in accounts receivable collection would result. A prolonged economic downturn could result in a larger customer churn than we currently anticipate and reduced demand for our products and services, in which case our revenues could be significantly impacted. Given the uncertainty around the duration and extent of the COVID-19 pandemic, we cannot accurately predict at this time how the pandemic will affect our business growth over time.

We do not expect the current construction delays we are experiencing to have a material effect on the company at this time, but additional supply disruptions because of the COVID-19 pandemic could occur and cause construction delays that are significant in the future. Significant construction delays would interfere with our ability to meet commitments to customers who have contracted for space in new IBX data centers under construction and could have a material impact on our business. While we have received "essential business" permits for construction in some jurisdictions, these classifications may not extend to the construction of new IBX data centers in all of our jurisdictions. We are also reliant on third party construction labor to build and expand our IBX data centers, to which we may not have access due to the COVID-19 pandemic. We rely on materials, products and manufacturing from regions of the world which are impacted by the pandemic. It may not be possible to find replacement products or supplies and ongoing delays could affect our business and growth.

While the full extent and impact of the COVID-19 pandemic cannot be reasonably estimated at this time, it could have a material adverse impact on our business and financial condition. The extent to which the COVID-19 pandemic will impact our financial condition or results of operations will depend on many factors and future developments, including new information about the COVID-19 pandemic and any new government regulations which may emerge to contain the virus, among others.

**Adverse global economic conditions, like the ones we are currently experiencing during the COVID-19 pandemic, could adversely impact our business and financial condition.**

Adverse global economic conditions like the ones we are currently experiencing because of the COVID-19 pandemic and uncertain conditions in the credit markets have created, and in the future may increase risk to our financial outlook. The uncertain global economy could also result in material churn in our customer base, reductions in revenues from our offerings, longer sales cycles, slower adoption of new technologies and increased price competition, which could adversely affect our liquidity. Customers and vendors filing for bankruptcy could also lead to costly and time-intensive actions with adverse effects, including greater difficulty or delay in accounts receivable collection. The uncertain economic environment could also have an impact on our foreign exchange forward contracts if our counterparties' credit deteriorates or if they are otherwise unable to perform their obligations. Finally, volatility in the financial markets like we are currently experiencing could affect our ability to access the capital markets at a time when we desire, 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.

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

In order to sustain our growth in certain of our existing and new markets, we may have to expand an existing data center, lease a new facility or acquire suitable land, with or without structures, to build new IBX data centers from the ground up. Expansions or new builds are currently underway, or being contemplated, in many of our markets. These construction projects expose us to many risks which could have an adverse effect on our operating results and financial condition. As described above, the COVID-19 pandemic has exacerbated many of these construction risks and has created additional risks for our business. Some of the risks associated with construction projects include:

- construction delays;
- lack of availability and delays for data center equipment, including items such as generators and switchgear;
- unexpected budget changes;
- increased prices for and delays in obtaining building supplies, raw materials and data center equipment;
- labor availability, labor disputes and work stoppages with contractors, subcontractors and other third parties, including interruptions in work due to the COVID-19 pandemic;

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- unanticipated environmental issues and geological problems;
- delays related to permitting from public agencies and utility companies; and
- delays in site readiness leading to our failure to meet commitments made to customers planning to expand into a new build.

Construction projects are dependent on permitting from public agencies and utility companies. Any delay in permitting could affect our growth. We are currently experiencing permitting delays in most metros due to reduced production from labor availability and from other COVID-19 pandemic related permitting restrictions or stoppages. While we don't currently anticipate any material long-term negative impact to our business because of these construction delays, these types of delays and stoppages related to permitting from public agencies and utility companies could worsen and have an adverse effect on our bookings, revenue or growth.

Additionally, all construction related projects require us to carefully select and rely on the experience of one or more designers, general contractors, and associated subcontractors during the design and construction process. Should a designer, general contractor or significant subcontractor experience financial problems or other problems during the design or construction process, we could experience significant delays, increased costs to complete the project and/or other negative impacts to our expected returns.

Site selection is also a critical factor in our expansion plans. There may not be suitable properties available in our markets with the necessary combination of high-power capacity and fiber connectivity, or selection may be limited. Thus, while we may prefer to locate new IBX data centers adjacent to our existing locations, it may not always be possible. In the event we decide to build new IBX data centers separate from our existing IBX data centers, we may provide metro connect solutions to connect these two centers. Should these solutions not provide the necessary reliability to sustain connection, this could result in lower interconnection revenue and lower margins and could have a negative impact on customer retention over time.

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

Over the last several years, we have completed numerous acquisitions, including most recently that of three data centers from Axtel S.A.B. de C.V. in Mexico in January 2020 and Packet Host, Inc. in March 2020. We expect to make additional acquisitions in the future, which may include (i) acquisitions of businesses, products, solutions or technologies that we believe to be complementary, (ii) acquisitions of new IBX data centers or real estate for development of new IBX data centers; (iii) acquisitions through investments in local data center operators; or (iv) acquisitions in new markets with higher risk profiles. 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 potential risks, including:

- the possible disruption of our ongoing business and diversion of management's attention by acquisition, transition and integration activities, particularly when multiple acquisitions and integrations are occurring at the same time;
- our potential inability to successfully pursue or realize some or all of the anticipated revenue opportunities associated with an acquisition or investment;
- the possibility that we may not be able to successfully integrate acquired businesses, or businesses in which we invest, 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 as a result of:
  - an injunction, law or order that makes unlawful the consummation of the acquisition;
  - inaccuracy or breach of the representations and warranties of, or the non-compliance with covenants by, either party;
  - the nonreceipt of closing documents; or
  - for other reasons;
- the possibility that there could be a delay in the completion of an acquisition, which could, among other things, result in additional transaction costs, loss of revenue or other negative effects resulting from uncertainty about completion of the respective acquisition;
- the dilution of our existing stockholders as a result of our issuing stock as consideration in a transaction or selling stock in order to fund the transaction;
- the possibility of customer dissatisfaction if we are unable to achieve levels of quality and stability on par with past practices;

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- the possibility that we will be unable to retain relationships with key customers, landlords and/or suppliers of the acquired businesses, some of which may terminate their contracts with the acquired business as a result of the acquisition or which may attempt to negotiate changes in their current or future business relationships with us;
- the possibility that we could lose key employees from the acquired businesses before integrating them;
- the possibility that we may be unable to integrate or migrate IT systems, which could create a risk of errors or performance problems and could affect our ability to meet customer service level obligations;
- the potential deterioration in our ability to access credit markets due to increased leverage;
- 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 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 future acquisitions may present new complexities in deal structure, related complex accounting and coordination with new partners, particularly in light of our desire to maintain our qualification for taxation as a REIT;
- the possibility that we may not be able to prepare and issue our financial statements and other public filings in a timely and accurate manner, and/or maintain an effective control environment, due to the strain on the finance organization when multiple acquisitions and integrations are occurring at the same time;
- the possibility that future acquisitions may trigger property tax reassessments resulting in a substantial increase to our property taxes beyond that which we anticipated;
- the possibility that future acquisitions may be in geographies and regulatory environments to which we are unaccustomed and we may become subject to complex requirements and risks with which we have limited experience;
- the possibility that carriers may find it cost-prohibitive or impractical to bring fiber and networks into a new IBX data center;
- the possibility of litigation or other claims in connection with, or as a result of, an acquisition, including claims from terminated employees, customers, former stockholders or other third parties;
- the possibility that asset divestments may be required in order to obtain regulatory clearance for a transaction;
- the possibility of pre-existing undisclosed liabilities, including, but not limited to, lease or landlord related liability, tax liability, environmental liability or asbestos liability, for which insurance coverage may be insufficient or unavailable, or other issues not discovered in the diligence process;
- the possibility that we receive limited or incorrect information about the acquired business in the diligence process, particularly in light of the travel bans and other restrictions imposed due to COVID-19; and
- the possibility that we do not have full visibility into customer agreements and customer termination rights during the diligence process which could expose us to additional liabilities after completing the acquisition.

The occurrence of any of these risks could have a material adverse effect on our business, results of operations, financial condition or cash flows. If an acquisition does not proceed or is materially delayed for any reason, the price of our common stock may be adversely impacted, and we will not recognize the anticipated benefits of the acquisition.

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

### **The anticipated benefits of our Joint Ventures with GIC may not be fully realized, or take longer to realize than expected.**

On October 8, 2019, we entered into a joint venture with GIC, Singapore's sovereign wealth fund, to develop and operate xScale™ data centers in Europe (the "EMEA Joint Venture"). We sold our London 10 and Paris 8 data centers and certain construction development and leases in London and Frankfurt to the EMEA Joint Venture. The data centers

and facilities are now owned by wholly-owned subsidiaries of EMEA Hyperscale 1 C.V., a Dutch limited partnership of which Equinix owns a 20% interest, GIC owns an 80% interest, and Equinix will operate the facilities.

On April 18, 2020, we signed an agreement to enter into a second joint venture with GIC, to develop and operate xScale™ data centers in Asia-Pacific (the "Asia-Pacific Joint Venture", and together with the EMEA Joint Venture, the "Joint Ventures"). We have agreed to sell 3 development sites in Japan to the Asia-Pacific Joint Venture upon closing. Pursuant to the terms of the Asia-Pacific Joint Venture, upon closing, the sites will be acquired and held by a wholly-owned subsidiary of APAC 1 Hyperscale LP, a limited partnership formed and registered under the laws of Singapore, of which Equinix will own a 20% interest and GIC will own an 80% interest, and Equinix will develop the data centers and operate the facilities. The completion of the Asia-Pacific Joint Venture is subject to closing conditions, including:

- certain financing conditions, including the fulfillment by each of Equinix and GIC of their funding obligations and obtaining certain external financing arrangements;
- completion of pre-closing reorganization; and
- obtaining required regulatory approvals.

Although we believe that the conditions will be satisfied, it is possible that the parties may not satisfy these conditions, or that they may only be satisfied subject to certain conditions or undertakings, which may not be acceptable. We cannot provide any assurance that the Asia-Pacific Joint Venture will be completed on the proposed terms, or that there will not be a delay in the completion of the Asia-Pacific Joint Venture. Failure to complete the Asia-Pacific Joint Venture in a timely manner or at all could adversely impact the price of our common stock and we could fail to recognize the anticipated benefits of the Asia-Pacific Joint Venture.

The success of the Asia-Pacific Joint Venture will depend, in part, on the successful development of the data center sites, and we may not realize all of the anticipated benefits. Such development may be more difficult, time-consuming or costly than expected and could result in increased costs, decreases in the amount of expected revenues and diversion of management's time and energy, which could materially impact our business, financial condition and results of operations.

We may not realize all of the anticipated benefits from either of the Joint Ventures. The success of these Joint Ventures will depend, in part, on the successful partnership between Equinix and GIC. Such a partnership is subject to risks as outlined below, and more generally, to the same types of business risks as would impact our IBX data center business. A failure to successfully partner, or a failure to realize our expectations for the Joint Ventures, could materially impact our business, financial condition and results of operations.

**Joint venture investments, such as our Joint Ventures with GIC, could expose us to risks and liabilities in connection with the formation of the new joint ventures, the operation of such joint ventures without sole decision-making authority, and our reliance on joint venture partners who may have economic and business interests that are inconsistent with our business interests.**

In addition to our current and proposed Joint Ventures with GIC, we may co-invest with other third parties through partnerships, joint ventures or other entities in the future. These joint ventures could result in our acquisition of non-controlling interests in, or shared responsibility for, managing the affairs of a property or portfolio of properties, partnership, joint venture or other entity. We may be subject to additional risks, including:

- we may not have the right to exercise sole decision-making authority regarding the properties, partnership, joint venture or other entity;
- if our partners become bankrupt or fail to fund their share of required capital contributions, we may choose to or be required to contribute such capital;
- our partners may have economic, tax or other business interests or goals which are inconsistent with our business interests or goals, and may be in a position to take actions contrary to our policies or objectives;
- our joint venture partners may take actions that are not within our control, which could require us to dispose of the joint venture asset, transfer it to a TRS in order for Equinix to maintain its qualification for taxation as a REIT, or purchase the partner's interests or assets at an above-market price;
- our joint venture partners may take actions unrelated to our business agreement but which reflect poorly on Equinix because of our joint venture;
- disputes between us and our partners may result in litigation or arbitration that would increase our expenses and prevent our management from focusing their time and effort on our day-to-day business; and

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- we may in certain circumstances be liable for the actions of our third-party partners or guarantee all or a portion of the joint venture's liabilities, which may require the company to pay an amount greater than its investment in the joint venture.

Each of these factors may result in returns on these investments being less than we expect or in losses, and our financial and operating results may be adversely affected.

### **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 may need to incur additional debt to support our growth. Additional debt may also be incurred to fund future acquisitions, any future special distributions, regular distributions or the other cash outlays associated with maintaining our qualification for taxation as a REIT. As of June 30, 2020, our total indebtedness (gross of debt issuance cost, debt discount, and debt premium) was approximately \$14.2 billion, our stockholders' equity was \$10.4 billion and our cash, cash equivalents, and investments totaled \$4.8 billion. In addition, as of June 30, 2020, we had approximately \$1.9 billion of additional liquidity available to us from our \$2.0 billion revolving credit facility. On July 7, 2020, we redeemed the remaining €750.0 million principal amount of the 2.875% Senior Notes due 2024 and \$1.1 billion principal amount of the 5.875% Senior Notes due 2026. In addition to our substantial debt, we lease many of our IBX data centers and certain equipment under lease agreements, some of which are accounted for as operating leases. As of June 30, 2020, we recorded operating lease liabilities of \$1.4 billion, which represents our obligation to make lease payments under those lease arrangements.

Our substantial amount of debt and related covenants, and our off-balance sheet commitments, could have important consequences. For example, they could:

- require us to dedicate a substantial portion of our cash flow from operations to make interest and principal payments on our debt and in respect of other off-balance sheet arrangements, reducing the availability of our cash flow to fund future capital expenditures, working capital, execution of our expansion strategy and other general corporate requirements;
- increase the likelihood of negative outlook from our credit rating agencies, or of a downgrade to our current rating;
- make it more difficult for us to satisfy our obligations under our various debt instruments;
- increase our cost of borrowing and even limit our ability to access additional debt to fund future growth;
- 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 operating flexibility through covenants with which we must comply;
- 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.

We may also need to refinance a portion of our outstanding debt as it matures. 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.

### **The phase out of the London Interbank Offered Rate ("LIBOR"), and uncertainty as to its replacement, may adversely affect our business.**

On July 27, 2017, the United Kingdom Financial Conduct Authority, which regulates LIBOR, announced that it intends to stop persuading or compelling banks to submit rates for the calibration of LIBOR after 2021 after which time it can no longer guarantee its availability. Although alternative reference rates have been proposed, it is unknown at this point which of these alternative reference rates will attain market acceptance as replacements for LIBOR.

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Certain term loan borrowings under our Senior Credit Facility bear interest at rates that are calculated based on LIBOR. In addition, certain of our agreements, including financing, customer, vendor, leasing, intercompany, derivative and joint venture agreements, also make reference to LIBOR. To prepare for the phase out of LIBOR, we may need to renegotiate the Senior Credit Facility and other agreements and may not be able to do so on terms that are favorable to us. It is also currently unknown what impact any contract modification will have on our financial statements. Further, the financial markets may be disrupted as a result of the phase out of LIBOR if banks fail to execute a smooth transition to an alternate rate.

Disruption in the financial markets or the inability to renegotiate our agreements to remove and replace LIBOR on favorable terms, or a negative impact from any contract modifications, could have an adverse effect on our business, financial position, and operating results.

**If we cannot effectively manage our international operations, and successfully implement our international expansion plans, or comply with evolving laws and regulations, our revenues may not increase, and our business and results of operations would be harmed.**

For the years ended December 31, 2019, 2018 and 2017, we recognized approximately 58%, 55% and 55%, respectively, of our revenues outside the U.S. We currently operate outside of the U.S. in Brazil, Canada, Colombia, Mexico, EMEA and Asia-Pacific.

To date, the network neutrality of our IBX data centers and the variety of networks available to our customers has often been a competitive advantage for us. In certain of our acquired IBX data centers in the Asia-Pacific region, the limited number of carriers available reduces that advantage. As a result, we may need to adapt our key revenue-generating offerings and pricing to be competitive in those markets. In addition, we are currently undergoing expansions or evaluating expansion opportunities outside of the U.S. 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;
- difficulties in managing across cultures and in foreign languages;
- 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 such as the United Kingdom's withdrawal from the European Union ("Brexit");
- our ability to secure and maintain the necessary physical and telecommunications infrastructure;
- compliance with anti-bribery and corruption laws;
- compliance with economic and trade sanctions enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury;
- compliance with evolving governmental regulation with which we have little experience;
- and
- compliance with evolving and varied regulations related to the COVID-19 pandemic.

Geo-political events, such as the COVID-19 pandemic, Brexit, political unrest in Hong Kong, and the trade war between the U.S. and China, may increase the likelihood of the listed risks to occur. With respect to Brexit, it is possible that the level of economic activity in the United Kingdom and the rest of Europe will be adversely impacted and that we will face increased regulatory and legal complexities in these regions which could have an adverse impact on our business and employees in EMEA and could adversely affect our financial condition and results of operations. 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 the General Data Protection Regulation (GDPR) and other data privacy laws and requirements, labor relations laws, tax laws, anti-competition regulations, import and trade restrictions, export requirements, economic and trade sanctions, 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 offerings 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 operating results. Our success depends, in part, on our ability to anticipate and address these risks and manage these difficulties.

**Economic and political uncertainty in developing markets could adversely affect our revenue and earnings.**

We conduct business and are contemplating expansion in developing markets with economies and governments that tend to be more volatile than those in the U.S. and Western Europe. The risk of doing business in developing markets such as Brazil, China, Colombia, Indonesia, Mexico, Oman, Turkey, the United Arab Emirates and other economically volatile areas could adversely affect our operations and earnings. Such risks include the financial instability among customers in these regions, political instability, fraud or corruption and other non-economic factors such as irregular trade flows that need to be managed successfully with the help of the local governments. In addition, commercial laws in some developing countries can be vague, inconsistently administered and retroactively applied. If we are deemed to be not in compliance with applicable laws in developing countries where we conduct business, our prospects and business in those countries could be harmed, which could then have a material adverse impact on our results of operations and financial position. Our failure to successfully manage economic, political and other risks relating to doing business in developing countries and economically and politically volatile areas could adversely affect our business.

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

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 cyber security, which could 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.

**Sales or issuances of shares of our common stock may adversely affect the market price of our common stock.**

Future sales or issuances of common stock or other equity related securities may adversely affect the market price of our common stock, including any shares of our common stock issued to finance capital expenditures, finance acquisitions or repay debt. We have established our ATM Program through which we may, from time to time, issue and sell shares of our common stock to or through sales agents up to established limits. By the end of the second quarter of 2020, we had \$197.5 million of shares of our common stock available for sale under our ATM Program. We expect to enter into a new "at-the-market" stock offering program once we have sold all shares available under our current ATM Program, which could lead to additional dilution for our stockholders. We may also seek authorization to sell additional shares of common stock under the ATM Program or through other means which could lead to additional dilution for our stockholders. Please see Note 12 within the Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q for sales of our common stock under the ATM Program.

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

The market price of the shares of our common stock has recently been and may continue to be highly volatile. General economic and market conditions, like the current instability due to the COVID-19 pandemic, and market conditions for telecommunications and real estate investment trust stocks in general, may affect the market price of our common stock.

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

- news or regulations regarding the COVID-19 pandemic;
- our operating results or forecasts;
- new issuances of equity, debt or convertible debt by us, including issuances through our ATM Program;



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- increases in market interest rates and changes in other general market and economic conditions, including inflationary concerns;
- changes to our capital allocation, tax planning or business strategy;
- our qualification for taxation as a REIT and our declaration of distributions to our stockholders;
- changes in U.S. or foreign tax laws;
- changes in management or key personnel;
- developments in our relationships with customers;
- announcements by our customers or competitors;
- changes in regulatory policy or interpretation;
- governmental investigations;
- changes in the ratings of our debt or stock by rating agencies or securities analysts;
- our purchase or development of real estate and/or additional IBX data centers;
- our acquisitions of complementary businesses; or
- the operational performance of our IBX data centers.

The stock market has from time to time experienced extreme price and volume fluctuations, which have particularly affected the market prices for telecommunications companies, and which have often been unrelated to their operating performance. These broad market fluctuations may adversely affect the market price of our common stock. One of the factors that investors may consider in deciding whether to buy or sell our common stock is our distribution rate as a percentage of our stock price relative to market interest rates. If market interest rates increase, prospective investors may demand a higher distribution rate or seek alternative investments paying higher dividends or interest. As a result, interest rate fluctuations and conditions in the capital markets may affect the market value of our common stock. Furthermore, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and/or damages, and divert management's attention from other business concerns, which could seriously harm our business.

**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, obligations to service our debt and the cash outlays associated with our REIT distribution requirements, are, and will continue to be, a substantial burden 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 revenues and costs in our international operations are denominated in foreign currencies. Where our prices are denominated in U.S. Dollars, our sales and revenues could be adversely affected by declines in foreign currencies relative to the U.S. Dollar, thereby making our offerings more expensive in local currencies. We are also exposed to risks resulting from fluctuations in foreign currency exchange rates in connection with our international operations. To the extent we are paying contractors in foreign currencies, our operations 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 currently undertake, and may decide in the future to further undertake, foreign exchange hedging transactions to reduce foreign currency transaction exposure, we do not currently intend to eliminate all foreign currency transaction exposure. In addition, REIT compliance rules may restrict our ability to enter into hedging transactions. Therefore, any weakness of the U.S. Dollar may have a positive impact on our consolidated results of operations because the currencies in the foreign countries in which we operate may translate into more U.S. Dollars. However, if the U.S. Dollar strengthens relative to the currencies of the foreign countries in which we operate, our consolidated financial position and results of operations may be negatively impacted as amounts in foreign currencies will generally translate into fewer U.S. Dollars. For additional information on foreign currency risks, refer to our discussion of foreign

currency risk in "Quantitative and Qualitative Disclosures About Market Risk" included in Item 3 of this Quarterly Report on Form 10-Q.

**Our derivative transactions expose us to counterparty credit risk.**

Our derivative transactions expose us to risk of financial loss if a counterparty fails to perform under a derivative contract. Disruptions in the financial markets could lead to sudden decreases in a counterparty's liquidity, which could make them unable to perform under the terms of their derivative contract and we may not be able to realize the benefit of the derivative contract.

**Changes in U.S. or foreign tax laws, regulations, or interpretations thereof, including changes to tax rates, may adversely affect our financial statements and cash taxes.**

We are a U.S. company with global subsidiaries and are subject to income and other taxes in the U.S. (although currently limited due to our taxation as a REIT) and many foreign jurisdictions. Significant judgment is required in determining our worldwide provision for income and other taxes. Although we believe that we have adequately assessed and accounted for our potential tax liabilities, and that our tax estimates are reasonable, there can be no certainty that additional taxes will not be due upon audit of our tax returns or as a result of changes to the tax laws and interpretations thereof. For example, we are currently undergoing audits and appealing the tentative assessments in a number of jurisdictions where we operate. The final results of these audits and the outcomes of the appeals are uncertain and may not be resolved in our favor. Additionally, the COVID-19 pandemic has led to increased spending by many governments. Because of this, there could be pressure to increase taxes in the future to pay back debts and generate revenues. The nature and timing of any future changes to each jurisdiction's tax laws and the impact on our future tax liabilities because of the COVID-19 pandemic or for any other reason cannot be predicted with any accuracy but could materially and adversely impact our results of operations and financial position or cash flows.

**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.**

We face risks associated with unauthorized access to our computer systems, loss or destruction of data, computer viruses, ransomware, malware, distributed denial-of-service attacks or other malicious activities. These threats may result from human error, equipment failure or fraud or malice on the part of employees or third parties. 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 our employees, or cause interruptions or malfunctions in our operations or our customers' operations. As we provide assurances to our customers that we provide a high level of security, such a compromise could be particularly harmful to our brand and reputation. 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 promptly detect that a cyber breach has occurred, or implement security measures in a timely manner or, if and when implemented, we may not be able to determine the extent to which these measures could be circumvented. Similarly, because of the COVID-19 pandemic, our non-IBX employees are working from home and could potentially be exposed to new security risks or attempted breaches because of these new work environments. Any breaches that may occur could expose us to increased risk of lawsuits, regulatory penalties, loss of existing or potential customers, damage relating to loss of proprietary information, 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 maintain insurance coverage for cyber risks, but such coverage may be unavailable or insufficient to cover our losses.

We offer professional services to our customers where we consult on data center solutions and assist with implementations. We also offer managed services in certain of our foreign jurisdictions outside of the U.S. where we manage the data center infrastructure for our customers. The access to our clients' networks and data, which is gained from these services, creates some risk that our clients' networks or data will be improperly accessed. We may also design our clients' cloud storage systems in such a way that exposes our clients to increased risk of data breach. If Equinix were held responsible for any such breach, it could result in a significant loss to Equinix, including damage to Equinix's client relationships, harm to our brand and reputation, and legal liability.

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

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

**Our offerings have a long sales cycle that may harm our revenue and operating results.**

A customer's decision to purchase our offerings 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 devote significant time and resources to pursuing a particular sale or customer that does not result in revenues. We have also significantly expanded our sales force in recent years, and it will take time for these new hires to become fully productive. Delays may be further exacerbated by the COVID-19 pandemic.

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 and cause volatility in our stock price.

**Any failure of our physical infrastructure or negative impact on our ability to provide our services, or damage to customer infrastructure within our IBX data centers, 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 solutions. We must safehouse our customers' infrastructure and equipment located in our IBX data centers and ensure our IBX data centers and non-IBX offices remain operational at all times. We own certain of our IBX data centers, but others are leased by us, and we rely on the landlord for basic maintenance of our leased IBX data centers and office buildings. If such landlord has not maintained a leased property sufficiently, we may be forced into an early exit from the center which could be disruptive to our business. Furthermore, we continue to acquire IBX data centers not built by us. If we discover that these buildings 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.

Problems at one or more of our IBX data centers or corporate offices, whether or not within our control, could result in service interruptions or significant infrastructure or equipment damage. These could result from numerous factors, including:

- human error;
- equipment failure;
- physical, electronic and cyber security breaches;
- fire, earthquake, hurricane, flood, tornado and other natural disasters;
- extreme temperatures;
- water damage;
- fiber cuts;
- power loss;
- terrorist acts;
- sabotage and vandalism;
- global pandemics such as the COVID-19 pandemic; and
- failure of business partners who provide our resale products.

We have service level commitment obligations to certain 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 a result of a problem at one of our IBX data centers and we may decide to reach settlements with affected customers irrespective of any such contractual limitations. Any such settlement may result in a reduction of revenue under U.S. generally accepted accounting principles ("GAAP"). 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 Americas, Asia-Pacific and EMEA regions and elsewhere, some of which have experienced significant system failures and electrical outages in the past. Our customers may in the future experience difficulties due to system failures unrelated to our systems and offerings. 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.

**We are currently making significant investments in our back-office information technology systems and processes. Difficulties from or disruptions to these efforts may interrupt our normal operations and adversely affect our business and operating results.**

We have been investing heavily in our back-office information technology systems and processes for a number of years and expect such investment to continue for the foreseeable future in support of our pursuit of global, scalable solutions across all geographies and functions that we operate in. These continuing investments include: 1) ongoing improvements to the customer experience from initial quote to customer billing and our revenue recognition process; 2) integration of recently-acquired operations onto our various information technology systems; and 3) implementation of new tools and technologies to either further streamline and automate processes, such as our procurement system, or to support our compliance with evolving U.S. GAAP, such as the new revenue accounting, derivatives and hedging and leasing standards. As a result of our continued work on these projects, we may experience difficulties with our systems, management distraction and significant business disruptions. For example, difficulties with our systems may interrupt our ability to accept and deliver customer orders and may adversely impact our overall financial operations, including our accounts payable, accounts receivables, general ledger, fixed assets, revenue recognition, close processes, internal financial controls and our ability to otherwise run and track our business. We may need to expend significant attention, time and resources to correct problems or find alternative sources for performing these functions. All of these changes to our financial systems also create an increased risk of deficiencies in our internal controls over financial reporting until such systems are stabilized. Such significant investments in our back-office systems may take longer to complete and cost more than originally planned. In addition, we may not realize the full benefits we hoped to achieve and there is a risk of an impairment charge if we decide that portions of these projects will not ultimately benefit the company or are de-scoped. Finally, the collective impact of these changes to our business has placed significant demands on impacted employees across multiple functions, increasing the risk of errors and control deficiencies in our financial statements, distraction from the effective operation of our business and difficulty in attracting and retaining employees. Any such difficulties or disruptions may adversely affect our business and operating results.

**Inadequate or inaccurate external and internal information, including budget and planning data, could lead to inaccurate financial forecasts and inappropriate financial decisions.**

Our financial forecasts are dependent on estimates and assumptions regarding budget and planning data, market growth, foreign exchange rates, our ability to remain qualified for taxation as a REIT, and our ability to generate sufficient cash flow to reinvest in the business, fund internal growth, make acquisitions, pay dividends and meet our debt obligations. Our financial projections are based on historical experience and on various other assumptions that our management believes to be reasonable under the circumstances and at the time they are made.

The COVID-19 pandemic is expected have a material effect on many aspects of the economy, but the extent of its impact on Equinix is difficult to predict at this time. We continue to evolve our forecasting models as the situation unfolds but if our predictions are inaccurate and our results differ materially from our forecasts, we could make inappropriate financial decisions. Additionally, inaccuracies in our models could adversely impact our compliance with REIT asset tests, future profitability, stock price and/or stockholder confidence.

**The level of insurance coverage that we purchase may prove to be inadequate.**

We carry liability, property, business interruption and other insurance policies to cover insurable risks to our company. We select the types of insurance, the limits and the deductibles based on our specific risk profile, the cost of the insurance coverage versus its perceived benefit and general industry standards. Our insurance policies contain

industry standard exclusions for events such as war and nuclear reaction. We purchase minimal levels of earthquake insurance for certain of our IBX data centers, but for most of our data centers, including many in California, we have elected to self-insure. The earthquake and flood insurance that we do purchase would be subject to high deductibles. Any of the limits of insurance that we purchase, including those for cyber risks, could prove to be inadequate, which could materially and adversely impact our business, financial condition and results of operations.

**Environmental regulations may impose upon us new or unexpected costs.**

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

We purchase significant amounts of electricity from generating facilities and utility companies that are subject to environmental laws, regulations and permit requirements. These environmental requirements are subject to material change, which could result in increases in our electricity suppliers' compliance costs that may be passed through to us. Regulations promulgated by the U.S. EPA could limit air emissions from coal-fired power plants, restrict discharges of cooling water, and otherwise impose new operational restraints on conventional power plants that could increase costs of electricity. Regulatory programs intended to promote increased generation of electricity from renewable sources may also increase our costs of procuring electricity. In addition, we are directly subject to environmental, health and safety laws regulating air emissions, storm water management and other issues arising in our business. For example, our emergency generators are subject to state and federal regulations governing air pollutants, which could limit the operation of those generators or require the installation of new pollution control technologies. While environmental regulations do not normally impose material costs upon our operations, unexpected events, equipment malfunctions, human error and changes in law or regulations, among other factors, can lead to additional capital requirements, limitations upon our operations and unexpected increased costs.

Regulation of greenhouse gas ("GHG") emissions could increase the cost of electricity by reducing amounts of electricity generated from fossil fuels, by requiring the use of more expensive generating methods or by imposing taxes or fees upon electricity generation or use. There has been interest in the U.S. Congress in addressing climate change expressed by a number of bills introduced in the current Congressional Session. Federal legislative proposals to address climate change include measures ranging from "carbon taxes," to tax credits, to federally imposed limitations on GHG emissions. The course of future legislation and regulation remains difficult to predict and the potential increased costs associated with GHG regulation or taxes cannot be estimated at this time.

State regulations also have the potential to increase our costs of obtaining electricity. Certain states, like California, have issued or may enact environmental regulations that could materially affect our facilities and electricity costs. California has limited GHG emissions from new and existing conventional power plants by imposing regulatory caps and by auctioning the rights to emission allowances. Washington, Oregon and Massachusetts have issued regulations to implement similar carbon cap and trade programs, and other states are considering proposals to limit carbon emissions through cap and trade programs, carbon pricing programs and other mechanisms. Some northeastern states adopted a multi-state program for limiting carbon emissions through the Regional Greenhouse Gas Initiative ("RGGI") cap and trade program. State programs have not had a material adverse effect on our electricity costs to date, but due to the market-driven nature of some of the programs, they could have a material adverse effect on electricity costs in the future.

Aside from regulatory requirements, we have separately undertaken efforts to procure energy from renewable energy projects in order to support new renewables development. The costs of procuring such energy may exceed the costs of procuring electricity from existing sources, such as existing utilities or electric service provided through

conventional grids. These efforts to support and enhance renewable electricity generation may increase our costs of electricity above those that would be incurred through procurement of conventional electricity from existing sources.

**Our business may be adversely affected by climate change and responses to it.**

Severe weather events, such as droughts, heat waves, fires, hurricanes, and flooding, pose a threat to our data centers and our customers' IT infrastructure through physical damage to facilities or equipment, power supply disruption, and long-term effects on the cost of electricity. The frequency and intensity of severe weather events are reportedly increasing locally and regionally as part of broader climate changes. Global weather pattern changes may also pose long-term risks of physical impacts to our business.

We maintain disaster recovery and business continuity plans that would be implemented in the event of severe weather events that interrupt our business or affect our customers' IT infrastructure. While these plans are designed to allow us to recover from natural disasters or other events that can interrupt our business, we cannot be certain that our plans will protect us or our customers from all such disasters or events. Failure to prevent impact to customers from such events could adversely affect our business.

We face pressures from our customers and stockholders, who are increasingly focused on climate change, to prioritize sustainable energy practices, reduce our carbon footprint and promote sustainability. To address these concerns, we pursue opportunities to improve energy efficiency and implement energy-saving retrofits. In addition, we have established a long-term goal of using 100% clean and renewable energy. As a result of these and other initiatives, we have made progress towards reducing our carbon footprint. It is possible, however, that our customers and investors might not be satisfied with our sustainability efforts or the speed of their adoption. If we do not meet our customers' or stockholders' expectations, our business and/or our share price could be harmed.

Concern about climate change in various jurisdictions may result in more stringent laws and regulatory requirements regarding emissions of carbon dioxide or other GHGs. As described above under "RISK FACTORS - Environmental regulations may impose upon us new or unexpected costs," restrictions on carbon dioxide or other GHG emissions could result in significant increases in operating or capital costs, including higher energy costs generally, and increased costs from carbon taxes, emission cap and trade programs and renewable portfolio standards that are imposed upon our electricity suppliers. These higher energy costs, and the cost of complying across our global platform, or of failing to comply with these and other climate change regulations, may have an adverse effect on our business and our results of operations.

**Our business could be harmed by prolonged power outages, shortages or capacity constraints.**

Our IBX data centers are affected by problems accessing electricity sources, such as planned or unplanned power outages and limitations on transmission or distribution. Unplanned power outages, including, but not limited to those relating to large storms, earthquakes, fires, tsunamis, cyberattacks and planned power outages by public utilities such as those related to Pacific Gas and Electric Company's ("PG&E") planned outages in California to minimize fire risks, could harm our customers and our business. While our offices are closed because of the COVID-19 pandemic, our employees in California may be subjected to planned power outages at home which could be difficult to track and could affect our day to day operations of our non-IBX employees. Our international operations are sometimes located outside of developed, reliable electricity markets, where we are exposed to some insecurity in supply associated with technical and regulatory problems, as well as transmission constraints. Some of our IBX data centers are located in leased buildings where, depending upon the lease requirements and number of tenants involved, we may or may not control some or all of the infrastructure including generators and fuel tanks. As a result, in the event of a power outage, we may be dependent upon the landlord, as well as the utility company, to restore the power. We attempt to limit our exposure to system downtime by using backup generators and alternative power supplies, but these measures may not always prevent downtime, which can adversely affect customer experience and revenues.

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 increasing per unit of equipment. As a result, some customers are consuming an increasing amount of power per cabinet. We generally do not control the amount of power our customers draw from their installed circuits, which can result in growth in the aggregate power consumption of our facilities beyond our original plan and expectations. This means that limitations on the capacity of our electrical delivery systems and equipment could limit customer utilization of our IBX data centers. These limitations 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.

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Each new facility requires access to significant quantities of electricity. Limitations on generation, transmission and distribution may limit our ability to obtain 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.

Any power outages, shortages or capacity constraints may have an adverse effect on our business and our results of operations.

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

Some customers have increased their use of high power density equipment, such as blade servers, in our IBX data centers which has 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 power may exceed the designed electrical capacity in these centers. As power, not space, is a limiting factor in many of our IBX data centers, our ability to fully utilize those IBX data centers may be impacted. 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 higher power specification than that of many of our older IBX data centers, there is a risk that demand will continue to increase and our IBX data centers could become underutilized sooner than expected.

### **If we are unable to implement our evolving organizational structure or if we are unable to recruit or retain key executives and qualified personnel, our business could be harmed.**

In connection with the evolving needs of our customers and our business, we undertook a review of our organizational architecture and have made, and will continue to make, changes as a result of that review. There can be no assurances that the changes won't result in attrition, that the significant amount of management and other employees' time and focus to implement the changes won't divert attention from operating and growing the business, or that any changes will result in increased organizational effectiveness. We must also continue to identify, hire, train and retain key personnel who maintain relationships with our customers and who can provide the technical, strategic and marketing skills required for our company's growth. There is a shortage of qualified personnel in these fields, and we compete with other companies for the limited pool of talent.

The failure to recruit and retain necessary key executives and personnel could cause disruption, harm our business and hamper our ability to grow our company.

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

The global multi-tenant data center market is highly fragmented. It is estimated that Equinix is one of more than 1,200 companies that provide these offerings around the world. Equinix competes with these firms which vary in terms of their data center offerings. We must continue to evolve our product strategy and be able to differentiate our IBX data centers and product offerings from those of our competitors.

Some of our competitors may adopt aggressive pricing policies, especially if they are not highly leveraged or have lower return thresholds than we do. As a result, we may suffer from pricing pressure that would adversely affect our ability to generate revenues. Some of these competitors may also provide our target customers with additional benefits, including bundled communication services or cloud services, and may do so in a manner that is more attractive to our potential customers than obtaining space in our IBX data centers. Similarly, with growing acceptance of cloud-based technologies, we are at risk of losing customers that may decide to fully leverage cloud infrastructure offerings instead of managing their own. Competitors could also operate more successfully or form alliances to acquire significant market share.

Failure to compete successfully may materially adversely affect our financial condition, cash flows and results of operations.

### **If we cannot continue to develop, acquire, market and provide new offerings or enhancements to existing offerings that meet customer requirements and differentiate us from our customers, our operating results could suffer.**

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As our customers evolve their IT strategies, we must remain flexible and evolve along with new technologies and industry and market shifts. Ineffective planning and execution in our cloud and product development strategies may cause difficulty in sustaining our competitive advantages.

The process of developing and acquiring new offerings and enhancing existing offerings is complex. If we fail to anticipate customers' evolving needs and expectations or do not adapt to technological and IT trends, our results of operations could suffer. In order to adapt effectively, we sometimes must make long-term investments, develop, acquire or obtain certain intellectual property and commit significant resources before knowing whether our predictions will accurately reflect customer demand for the new offerings. If we misjudge customer needs in the future, our new offerings may not succeed, and our revenues and earnings may be harmed. Additionally, any delay in the development, acquisition, marketing or launch of a new offering could result in customer dissatisfaction or attrition. If we cannot continue adapting our products, or if our competitors can adapt their products more quickly than us, our business could be harmed.

We recently announced our Joint Ventures with GIC and are also in discussions with a targeted set of hyperscale customers to develop capacity to serve their larger footprint needs by leveraging existing capacity and dedicated hyperscale builds. We have announced our intention to seek additional joint venture partners for certain of our hyperscale builds. There can be no assurances that our joint ventures will be successful or that we find additional partners or that we are able to successfully meet the needs of these customers.

We also recently acquired Packet Host, Inc., a bare metal automation company to facilitate a new product offering for Equinix. While we believe this new product offering will be desirable to our customers and will complement our other offerings on Platform Equinix, we cannot guarantee the success of this product or any other new product offering. Our company has not historically offered hardware solutions, and this is a new market area for us which can bring challenges and could harm our business if not executed in the time or manner that we expect.

### **If our internal controls are found to be ineffective, our financial results or our stock price may be adversely affected.**

Our most recent evaluation of our controls resulted in our conclusion that, as of December 31, 2019, in compliance with Section 404 of the Sarbanes-Oxley Act of 2002, our internal controls over financial reporting were effective. Our ability to manage our operations and growth through, for example, the integration of recently acquired businesses, the adoption of new accounting principles and tax laws, and our overhaul of our back office systems that, for example, support the customer experience from initial quote to customer billing and our revenue recognition process, will require us to further develop our controls and reporting systems and implement or amend new or existing controls and reporting systems in those areas where the implementation and integration is still ongoing. All of these changes to our financial systems and the implementation and integration of acquisitions create an increased risk of deficiencies in our internal controls over financial reporting. If, in the future, our internal control over financial reporting is found to be ineffective, or if a material weakness is identified in our controls over financial reporting, our financial results may be adversely affected. Investors may also lose confidence in the reliability of our financial statements which could adversely affect our stock price.

### **Our operating results may 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 may 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 depreciation and interest expense 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 solutions at our IBX data centers;
- changes in general economic conditions, such as from the COVID-19 pandemic or other economic downturns, or specific market conditions in the telecommunications and internet industries, any of which could have a material impact on us or 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;



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- the duration of the sales cycle for our offerings and our ability to ramp our newly-hired sales persons to full productivity within the time period we have forecasted;
- additions and changes in product offerings and our ability to ramp up and integrate new products within the time period we have forecasted;
- restructuring charges or reversals of restructuring charges, which may be necessary due to revised sublease assumptions, changes in strategy or otherwise;
- acquisitions or dispositions we may make;
- the financial condition and credit risk of our customers;
- the provision of customer discounts and credits;
- the mix of current and proposed products and offerings and the gross margins associated with our products and offerings;
- the timing required for new and future IBX data 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 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 or changes in shared operating costs in connection with our leases, which are commonly referred to as common area maintenance expenses;
- 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 electricity;
- changes in employee stock-based compensation;
- overall inflation;
- increasing interest expense due to any increases in interest rates and/or potential additional debt financings;
- changes in our tax planning strategies or failure to realize anticipated benefits from such strategies;
- changes in income tax benefit or expense; and
- changes in or new GAAP 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.

### **Our days sales outstanding ("DSO") may be negatively impacted by process and system upgrades and acquisitions.**

Our DSO may be negatively impacted by ongoing process and system upgrades which can impact our customers' experience in the short term, together with integrating recent acquisitions into our processes and systems, which may have a negative impact on our operating cash flows, liquidity and financial performance.

### **We may incur goodwill and other intangible asset impairment charges, or impairment charges to our property, plant and equipment, which could result in a significant reduction to our earnings.**

In accordance with U.S. GAAP, we are required to assess our goodwill and other intangible assets annually, or more frequently whenever events or changes in circumstances indicate potential impairment, such as changing market conditions or any changes in key assumptions. If the testing performed indicates that an asset may not be recoverable, we are required to record a non-cash impairment charge for the difference between the carrying value of the goodwill

or other intangible assets and the implied fair value of the goodwill or other intangible assets in the period the determination is made.

We also periodically monitor the remaining net book values of our property, plant and equipment, including at the individual IBX data center level. Although each individual IBX data center is currently performing in accordance with our expectations, the possibility that one or more IBX data centers could begin to under-perform relative to our expectations is possible and may also result in non-cash impairment charges.

These charges could be significant, which could have a material adverse effect on our business, results of operations or financial condition.

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

As of June 30, 2020, our retained earnings were \$1,642.6 million. Although we have generated net income for each fiscal year since 2008, except for the year ended December 31, 2014, we are currently investing heavily in our future growth through the build out of multiple additional IBX data centers, expansions of IBX data centers and acquisitions of complementary businesses. As a result, we will incur higher depreciation and other operating expenses, as well as transaction costs and interest expense, that may negatively impact our ability to sustain profitability in future periods unless and until these new IBX data centers generate enough revenue to exceed their operating costs and cover the additional overhead needed to scale our business for this anticipated growth. The current global financial uncertainty 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.

**The failure to obtain favorable terms when we renew our IBX data center leases, or the failure to renew such 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. 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. Most of our IBX data center leases have renewal options available to us. However, many of these renewal options provide for the rent to be set at then-prevailing market rates. To the extent that then-prevailing market rates or negotiated rates are higher than present rates, these higher costs may adversely impact our business and results of operations, or we may decide against renewing the lease. In the event that an IBX data center lease does not have a renewal option, or we fail to exercise a renewal option in a timely fashion and lose our right to renew the lease, we may not be successful in negotiating a renewal of the lease with the landlord. A failure to renew a lease could force us to exit a building prematurely, which could disrupt our business, harm our customer relationships, expose us to liability under our customer contracts, cause us to take impairment charges and affect our operating results negatively.

**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.

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. 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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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.

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

We derive revenues from contracts with the U.S. government, state and local governments and foreign governments. 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 often have unique terms and conditions, such as most favored customer obligations, and 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, grow 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 enterprises, cloud, digital content and 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 our offerings, 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 offerings. 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, any uncertain global economic climate, including the one we are currently experiencing as a result of the COVID-19 pandemic, could harm our ability to attract and retain customers if customers slow spending, or delay decision-making on our offerings, or if customers begin to have difficulty paying us or seek bankruptcy protection 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 may be subject to securities class action and other litigation, which may harm our business and results of operations.**

We may be subject to securities class action or 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. Litigation can be lengthy, expensive, and divert management's attention and resources. Results cannot be predicted with certainty and an adverse outcome in litigation could result in monetary damages or injunctive relief. Further, any payments made in settlement may directly reduce our revenue under U.S. GAAP and could negatively impact our operating results for the period. For all of these reasons, 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 make assurances 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 our business.**

Various laws and governmental regulations, both in the U.S. and abroad, governing internet-related services, related communications services and information technologies remain largely unsettled, even in areas where there has been some legislative action. For example, the Federal Communications Commission ("FCC") recently overturned network neutrality rules, which may result in material changes in the regulations and contribution regime affecting us and our customers. Furthermore, the U.S. Congress and state legislatures are reviewing and considering changes to the new FCC rules making the future of network neutrality and its impact on Equinix uncertain. There may also be forthcoming regulation in the U.S. in the areas of cybersecurity, data privacy and data security, any of which could impact Equinix and our customers. Similarly, data privacy regulations continue to evolve and must be addressed by Equinix as a global company.

We remain focused on whether and how existing and changing laws, such as those governing intellectual property, privacy, libel, telecommunications services, data flows/data localization, carbon emissions impact, and taxation apply to the internet and to related offerings such as ours; 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 continuing 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.

While our business and IBX data centers are currently all operational and have been designated "critical infrastructure" or "essential services" in order to remain open in many jurisdictions during the COVID-19 pandemic, any regulations restricting our ability to operate our business due to COVID-19 could have a material adverse effect on our business. Additionally, the "essential services" and "critical infrastructure" designations we have experienced could lead countries or local regulators to impose additional regulations on the data center industry following the COVID-19 pandemic in order to have better visibility and control over our industry for future events.

The adoption, or modification of laws or regulations relating to the internet and our business, or interpretations of existing laws, could have a material adverse effect on our business, financial condition and results of operations.

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

If customers combine businesses, they may require less colocation space, which could lead to churn in our customer base. Regional competitors may also consolidate to become a global competitor. Consolidation of our customers and/or our competitors may present a risk to our business model and have a negative impact on our revenues.

**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:

- ownership limitations and transfer restrictions relating to our stock that are intended to facilitate our compliance with certain REIT rules relating to share ownership;
- authorization for the issuance of "blank check" preferred stock;
- the prohibition of cumulative voting in the election of directors;
- limits on the persons who may call special meetings of stockholders;
- limits on stockholder action by written consent; and
- advance notice requirements for nominations to the Board of Directors 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 Related to Our Taxation as a REIT

### We may not remain qualified for taxation as a REIT.

We have elected to be taxed as a REIT for U.S. federal income tax purposes beginning with our 2015 taxable year. We believe that our organization and method of operation comply with the rules and regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code"), such that we will continue to qualify for taxation as a REIT. However, we cannot assure you that we have qualified for taxation as a REIT or that we will remain so qualified. Qualification for taxation as a REIT involves the application of highly technical and complex provisions of the Code to our operations as well as various factual determinations concerning matters and circumstances not entirely within our control. There are limited judicial or administrative interpretations of applicable REIT provisions of the Code.

If, in any taxable year, we fail to remain qualified for taxation as a REIT and are not entitled to relief under the Code:

- we will not be allowed a deduction for distributions to stockholders in computing our taxable income;
- we will be subject to U.S. federal and state income tax on our taxable income at regular corporate income tax rates; and
- we would not be eligible to elect REIT status again until the fifth taxable year that begins after the first year for which we failed to qualify for taxation as a REIT.

Any such corporate tax liability could be substantial and would reduce the amount of cash available for other purposes. If we fail to remain qualified for taxation as a REIT, we may need to borrow additional funds or liquidate some investments to pay any additional tax liability. Accordingly, funds available for investment and distributions to stockholders could be reduced.

### As a REIT, failure to make required distributions would subject us to federal corporate income tax.

We paid quarterly distributions in March and June of 2020 and have declared a quarterly distribution to be paid on September 23, 2020. The amount, timing and form of any future distributions will be determined, and will be subject to adjustment, by our Board of Directors. To remain qualified for taxation as a REIT, we are generally required to distribute at least 90% of our REIT taxable income (determined without regard to the dividends paid deduction and excluding net capital gain) each year, or in limited circumstances, the following year, to our stockholders. Generally, we expect to distribute all or substantially all of our REIT taxable income. If our cash available for distribution falls short of our estimates, we may be unable to maintain distributions that approximate our REIT taxable income and may fail to remain qualified for taxation as a REIT. In addition, our cash flows from operations may be insufficient to fund required distributions as a result of differences in timing between the actual receipt of income and the payment of expenses and the recognition of income and expenses for U.S. federal income tax purposes, or the effect of nondeductible expenditures, such as capital expenditures, payments of compensation for which Section 162(m) of the Code denies a deduction, interest expense deductions limited by Section 163(j) of the Code, the creation of reserves or required debt service or amortization payments.

To the extent that we satisfy the 90% distribution requirement but distribute less than 100% of our REIT taxable income, we will be subject to U.S. federal corporate income tax on our undistributed taxable income. In addition, we will be subject to a 4% nondeductible excise tax on our undistributed taxable income if the actual amount that we distribute to our stockholders for a calendar year is less than the minimum amount specified under the Code.

### We may be required to borrow funds, sell assets or raise equity to satisfy our REIT distribution requirements.

Due to the size and timing of future distributions, including any distributions made to satisfy REIT distribution requirements, we may need to borrow funds, sell assets or raise equity, even if the then-prevailing market conditions are not favorable for these borrowings, sales or offerings.

Any insufficiency of our cash flows to cover our REIT distribution requirements could adversely impact our ability to raise short- and long-term debt, to sell assets, or to offer equity securities in order to fund distributions required to maintain our qualification and taxation as a REIT. Furthermore, the REIT distribution requirements may increase the financing we need to fund capital expenditures, future growth and expansion initiatives. This would increase our indebtedness. A significant increase in our outstanding debt could lead to a downgrade of our credit rating. A downgrade of our credit rating could negatively impact our ability to access credit markets. Further, certain of our current debt instruments limit the amount of indebtedness we and our subsidiaries may incur. Significantly more financing, therefore,

may be unavailable, more expensive or restricted by the terms of our outstanding indebtedness. For a discussion of risks related to our substantial level of indebtedness, see other risks described elsewhere in this Form 10-Q.

Whether we issue equity, at what price and the amount and other terms of any such issuances will depend on many factors, including alternative sources of capital, our then-existing leverage, our need for additional capital, market conditions and other factors beyond our control. If we raise additional funds through the issuance of equity securities or debt convertible into equity securities, the percentage of stock ownership by our existing stockholders may be reduced. In addition, new equity securities or convertible debt securities could have rights, preferences and privileges senior to those of our current stockholders, which could substantially decrease the value of our securities owned by them. Depending on the share price we are able to obtain, we may have to sell a significant number of shares in order to raise the capital we deem necessary to execute our long-term strategy, and our stockholders may experience dilution in the value of their shares as a result.

**Complying with REIT requirements may limit our flexibility or cause us to forgo otherwise attractive opportunities.**

To remain qualified for taxation as a REIT for U.S. federal income tax purposes, we must satisfy tests concerning, among other things, the sources of our income, the nature and diversification of our assets and the amounts we distribute to our stockholders. For example, under the Code, no more than 20% of the value of the assets of a REIT may be represented by securities of one or more TRSs. Similar rules apply to other nonqualifying assets. These limitations may affect our ability to make large investments in other non-REIT qualifying operations or assets. In addition, in order to maintain our qualification for taxation as a REIT, we must distribute at least 90% of our REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains. Even if we maintain our qualification for taxation as a REIT, we will be subject to U.S. federal income tax at regular corporate income tax rates for our undistributed REIT taxable income, as well as U.S. federal income tax at regular corporate income tax rates for income recognized by our TRSs; we also pay taxes in the foreign jurisdictions in which our international assets and operations are held and conducted regardless of our qualification for taxation as a REIT. Because of these distribution requirements, we will likely not be able to fund future capital needs and investments from operating cash flow. As such, compliance with REIT tests may hinder our ability to make certain attractive investments, including the purchase of significant nonqualifying assets and the material expansion of non-real estate activities.

**Our ability to fully deduct our interest expense may be limited, or we may be required to adjust the tax depreciation of our real property in order to maintain the full deductibility of our interest expense.**

The Code limits interest deductions for businesses, whether in corporate or passthrough form, to the sum of the taxpayer's business interest income for the tax year and 50% (30% for tax years after 2020) of the taxpayer's adjusted taxable income for that tax year. This limitation does not apply to an "electing real property trade or business". Although REITs are permitted to make such an election, we do not currently intend to do so. If we so elect in the future, depreciable real property that we hold (including specified improvements) would be required to be depreciated for U.S. federal income tax purposes under the alternative depreciation system of the Code, which generally imposes a class life for depreciable real property as long as 40 years.

**As a REIT, we are limited in our ability to fund distribution payments using cash generated through our TRSs.**

Our ability to receive distributions from our TRSs is limited by the rules with which we must comply to maintain our qualification for taxation as a REIT. In particular, at least 75% of our gross income for each taxable year as a REIT must be derived from real estate. Consequently, no more than 25% of our gross income may consist of dividend income from our TRSs and other nonqualifying types of income. Thus, our ability to receive distributions from our TRSs may be limited and may impact our ability to fund distributions to our stockholders using cash flows from our TRSs. Specifically, if our TRSs become highly profitable, we might become limited in our ability to receive net income from our TRSs in an amount required to fund distributions to our stockholders commensurate with that profitability.

In addition, a significant amount of our income and cash flows from our TRSs is generated from our international operations. In many cases, there are local withholding taxes and currency controls that may impact our ability or willingness to repatriate funds to the United States to help satisfy REIT distribution requirements.

**Our extensive use of TRSs, including for certain of our international operations, may cause us to fail to remain qualified for taxation as a REIT.**

Our operations include an extensive use of TRSs. The net income of our TRSs is not required to be distributed to us, and income that is not distributed to us generally is not subject to the REIT income distribution requirement. However, there may be limitations on our ability to accumulate earnings in our TRSs and the accumulation or reinvestment of significant earnings in our TRSs could result in adverse tax treatment. In particular, if the accumulation of cash in our TRSs causes (1) the fair market value of our securities in our TRSs to exceed 20% of the fair market value of our assets or (2) the fair market value of our securities in our TRSs and other nonqualifying assets to exceed 25% of the fair market value of our assets, then we will fail to remain qualified for taxation as a REIT. Further, a substantial portion of our TRSs are overseas, and a material change in foreign currency rates could also negatively impact our ability to remain qualified for taxation as a REIT.

The Code imposes limitations on the ability of our TRSs to utilize specified income tax deductions, including limits on the use of net operating losses and limits on the deductibility of interest expense.

**Our cash distributions are not guaranteed and may fluctuate.**

A REIT generally is required to distribute at least 90% of its REIT taxable income to its stockholders.

Our Board of Directors, in its sole discretion, will determine on a quarterly basis the amount of cash to be distributed to our stockholders based on a number of factors including, but not limited to, our results of operations, cash flow and capital requirements, economic conditions, tax considerations, borrowing capacity and other factors, including debt covenant restrictions that may impose limitations on cash payments, future acquisitions and divestitures and any stock repurchase program. Consequently, our distribution levels may fluctuate.

**Even if we remain qualified for taxation as a REIT, some of our business activities are subject to corporate level income tax and foreign taxes, which will continue to reduce our cash flows, and we will have potential deferred and contingent tax liabilities.**

Even if we remain qualified for taxation as a REIT, we may be subject to some federal, state, local and foreign taxes, including taxes on any undistributed income, and state, local or foreign income, franchise, property and transfer taxes. In addition, we could in certain circumstances be required to pay an excise or penalty tax, which could be significant in amount, in order to utilize one or more relief provisions under the Code to maintain our qualification for taxation as a REIT.

A portion of our business is conducted through wholly-owned TRSs because certain of our business activities could generate nonqualifying REIT income as currently structured and operated. The income of our U.S. TRSs will continue to be subject to federal and state corporate income taxes. In addition, our international assets and operations will continue to be subject to taxation in the foreign jurisdictions where those assets are held or those operations are conducted. Any of these taxes would decrease our earnings and our available cash.

We will also be subject to a U.S. federal corporate level income tax at the highest regular corporate income tax rate (currently 21%) on gain recognized from a sale of a REIT asset where our basis in the asset is determined by reference to the basis of the asset in the hands of a C corporation (such as an asset that we or our QRSs hold following the liquidation or other conversion of a former TRS). This 21% tax is generally applicable to any disposition of such an asset during the five-year period after the date we first owned the asset as a REIT asset, to the extent of the built-in-gain based on the fair market value of such asset on the date we first held the asset as a REIT asset.

**Complying with REIT requirements may limit our ability to hedge effectively and increase the cost of our hedging and may cause us to incur tax liabilities.**

The REIT provisions of the Code limit our ability to hedge assets, liabilities, revenues and expenses. Generally, income from hedging transactions that we enter into to manage risk of interest rate changes or fluctuations with respect to borrowings made or to be made by us to acquire or carry real estate assets and income from certain currency hedging transactions related to our non-U.S. operations, as well as income from qualifying counteracting hedges, do not constitute "gross income" for purposes of the REIT gross income tests. To the extent that we enter into other types of hedging transactions, the income from those transactions is likely to be treated as nonqualifying income for purposes of the REIT gross income tests. As a result of these rules, we may need to limit our use of advantageous hedging techniques or implement those hedges through our TRSs, which we presently do. This increases the cost of our hedging activities because our TRSs are subject to tax on income or gains resulting from hedges entered into by them and

may expose us to greater risks associated with changes in interest rates or exchange rates than we would otherwise want to bear. In addition, hedging losses in any of our TRSs may not provide any tax benefit, except for being carried forward for possible use against future income or gain in the TRSs. As a result, our financial performance, including our AFFO, may also fluctuate.

**Distributions payable by REITs generally do not qualify for preferential tax rates.**

Dividends payable by U.S. corporations to noncorporate stockholders, such as individuals, trusts and estates, are generally eligible for reduced U.S. federal income tax rates applicable to "qualified dividends." Distributions paid by REITs generally are not treated as "qualified dividends" under the Code, and the reduced rates applicable to such dividends do not generally apply. However, for tax years beginning before 2026, REIT dividends paid to noncorporate stockholders are generally taxed at an effective tax rate lower than applicable ordinary income tax rates due to the availability of a deduction under the Code for specified forms of income from passthrough entities. More favorable rates will nevertheless continue to apply to regular corporate "qualified" dividends, which may cause some investors to perceive that an investment in a REIT is less attractive than an investment in a non-REIT entity that pays dividends, thereby reducing the demand and market price of our common stock.

**Our certificate of incorporation contains restrictions on the ownership and transfer of our stock, though they may not be successful in preserving our qualification for taxation as a REIT.**

In order for us to remain qualified for taxation as a REIT, no more than 50% of the value of outstanding shares of our stock may be owned, beneficially or constructively, by five or fewer individuals at any time during the last half of each taxable year. In addition, rents from "affiliated tenants" will not qualify as qualifying REIT income if we own 10% or more by vote or value of the customer, whether directly or after application of attribution rules under the Code. Subject to certain exceptions, our certificate of incorporation prohibits any stockholder from owning, beneficially or constructively, more than (i) 9.8% in value of the outstanding shares of all classes or series of our capital stock or (ii) 9.8% in value or number, whichever is more restrictive, of the outstanding shares of any class or series of our capital stock. We refer to these restrictions collectively as the "ownership limits" and we included them in our certificate of incorporation to facilitate our compliance with REIT tax rules. The constructive ownership rules under the Code are complex and may cause the outstanding stock owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than 9.8% of our outstanding common stock (or the outstanding shares of any class or series of our stock) by an individual or entity could cause that individual or entity or another individual or entity to own constructively in excess of the relevant ownership limits. Any attempt to own or transfer shares of our common stock or of any of our other capital stock in violation of these restrictions may result in the shares being automatically transferred to a charitable trust or may be void. Even though our certificate of incorporation contains the ownership limits, there can be no assurance that these provisions will be effective to prevent our qualification for taxation as a REIT from being jeopardized, including under the affiliated tenant rule. Furthermore, there can be no assurance that we will be able to monitor and enforce the ownership limits. If the restrictions in our certificate of incorporation are not effective and, as a result, we fail to satisfy the REIT tax rules described above, then absent an applicable relief provision, we will fail to remain qualified for taxation as a REIT.

In addition, the ownership and transfer restrictions could delay, defer or prevent a transaction or a change in control that might involve a premium price for our stock or otherwise be in the best interest of our stockholders. As a result, the overall effect of the ownership and transfer restrictions may be to render more difficult or discourage any attempt to acquire us, even if such acquisition may be favorable to the interests of our stockholders.

**Legislative or other actions affecting REITs could have a negative effect on us or our stockholders.**

At any time, the U.S. federal or state income tax laws governing REITs, or the administrative interpretations of those laws, may be amended. U.S. federal and state tax laws are constantly under review by persons involved in the legislative process, the Internal Revenue Service, the U.S. Department of the Treasury and state taxing authorities. Changes to the tax laws, regulations and administrative interpretations, which may have retroactive application, could adversely affect us. In addition, some of these changes could have a more significant impact on us as compared to other REITs due to the nature of our business and our substantial use of TRSs, particularly non-U.S. TRSs.

**We could incur adverse tax consequences if we fail to integrate an acquisition target in compliance with the requirements to qualify for taxation as a REIT.**

We periodically explore and occasionally consummate merger and acquisition transactions. When we consummate these transactions, we structure the acquisition to successfully manage the REIT income, asset, and distribution tests that we must satisfy. We believe that we have and will in the future successfully integrate our acquisition targets in a



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manner that has and will allow us to timely satisfy the REIT tests applicable to us, but if we failed or in the future fail to do so, then we could jeopardize or lose our qualification for taxation as a REIT, particularly if we were not eligible to utilize relief provisions set forth in the Code.

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

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosure**

Not applicable.

**Item 5. Other Information**

None.

[Table of Contents](#)**Item 6. Exhibits**

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
2.1	Rule 2.7 Announcement, dated as May 29, 2015. Recommended Cash and Share Offer for Telecity Group plc by Equinix, Inc.	8-K	5/29/2015	2.1	
2.2	Cooperation Agreement, dated as of May 29, 2015, by and between Equinix, Inc. and Telecity Group plc.	8-K	5/29/2015	2.2	
2.3	Amendment to Cooperation Agreement, dated as of November 24, 2015, by and between Equinix, Inc. and Telecity Group plc.	10-K	12/31/2015	2.3	
2.4	Transaction Agreement, dated as of December 6, 2016, by and between Verizon Communications Inc. and Equinix, Inc.	8-K	12/6/2016	2.1	
2.5	Amendment No. 1 to the Transaction Agreement, dated February 23, 2017, by and between Verizon Communications Inc. and Equinix, Inc.	10-K	12/31/2016	2.5	
2.6	Amendment No.2 to the Transaction Agreement, dated April 30, 2017, by and between Verizon Communications Inc. and Equinix, Inc.	8-K	5/1/2017	2.1	
2.7	Amendment No.3 to the Transaction Agreement, dated June 29, 2018, by and between Verizon Communications Inc. and Equinix, Inc.	10-Q	8/8/2018	2.7	
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.	10-K/A	12/31/2002	3.1	
3.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant.	8-K	6/14/2011	3.1	
3.3	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant.	8-K	6/11/2013	3.1	
3.4	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant.	10-Q	6/30/2014	3.4	
3.5	Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock.	10-K/A	12/31/2002	3.3	
3.6	Amended and Restated Bylaws of the Registrant.	8-K	3/29/2016	3.1	
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6.				
4.2	Indenture, dated as of November 20, 2014, between Equinix, Inc. and U.S. Bank National Association as trustee.	8-K	11/20/2014	4.1	

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4.3	<a href="#">Third Supplemental Indenture, dated as of December 4, 2015, between Equinix, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	12/4/2015	4.2
4.4	Form of 5.875% Senior Note due 2026 (see Exhibit 4.3).			
4.5	<a href="#">Fourth Supplemental Indenture, dated as of March 22, 2017 between Equinix, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	3/22/2017	4.2
4.6	Form of 5.375% Senior Notes due 2027 (see Exhibit 4.5).			
4.7	<a href="#">Fifth Supplemental Indenture, dated as of September 20, 2017 among Equinix, Inc. and U.S. Bank National Association, as trustee, and Elavon Financial Services DAC, UK Branch, as paying agent.</a>	8-K	9/20/2017	4.2
4.80	Form of 2.875% Senior Notes due 2025 (see Exhibit 4.7).			
4.09	<a href="#">Indenture, dated as of December 12, 2017, between Equinix, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	12/5/2017	4.1
4.10	<a href="#">Supplemental Indenture, dated as of December 12, 2017, among Equinix, Inc. and U.S. Bank National Association, as trustee, and Elavon Financial Services DAC, UK Branch, as paying agent.</a>	8-K	12/5/2017	4.2
4.11	Form of 2.875% Senior Notes due 2026 (see Exhibit 4.10).			
4.12	<a href="#">Second Supplemental Indenture, dated as of March 14, 2018, among Equinix, Inc. and U.S. Bank National Association, as trustee, and Elavon Financial Services DAC, UK Branch, as paying agent.</a>	8-K	3/14/2018	4.2
4.13	Form of 2.875% Senior Notes due 2024 (see Exhibit 4.12).			
4.14	<a href="#">Third Supplemental Indenture, dated as of April 2, 2018, among Equinix, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	4/3/2018	4.2
4.15	Form of 5.00% Senior Notes due April 2020 (see Exhibit 4.14).			
4.16	Form of 5.00% Senior Notes due October 2020 (see Exhibit 4.14).			
4.17	Form of 5.00% Senior Notes due April 2021 (see Exhibit 4.14).			
4.18	<a href="#">Fourth Supplemental Indenture, dated as of November 18, 2019, among Equinix, Inc and U.S. Bank National Association, as trustee.</a>	8-K	11/18/2019	4.2
4.19	Form of 2.625% Senior Notes due 2024 (See Exhibit 4.18).			
4.20	<a href="#">Fifth Supplemental Indenture, dated as of November 18, 2019, among Equinix, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	11/18/2019	4.4
4.21	Form of 2.900% Senior Notes due 2026 (See Exhibit 4.20).			

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4.22	Sixth Supplemental Indenture, dated as of November 18, 2019, among Equinix, Inc. and U.S. Bank National Association, as trustee.	8-K	11/18/2019	4.6
4.23	Form of 3.200% Senior Notes due 2029 (See Exhibit 4.22)	8-K	6/22/2020	
4.24	Seventh Supplemental Indenture, dated as of June 22, 2020, among Equinix, Inc. and U.S. Bank National Association, as trustee	8-K	6/22/2020	4.2
4.25	Form of 1.250% Senior Note due 2025 (See Exhibit 4.24)	8-K	6/22/2020	4.3
4.26	Eighth Supplemental Indenture, dated as of June 22, 2020, among Equinix, Inc. and U.S. Bank National Association, as trustee	8-K	6/22/2020	4.4
4.27	Form of 1.800% Senior Note due 2027 (See Exhibit 4.26)	8-K	6/22/2020	4.5
4.28	Ninth Supplemental Indenture, dated as of June 22, 2020, among Equinix, Inc. and U.S. Bank National Association, as trustee	8-K	6/22/2020	4.6
4.29	Form of 2.150% Senior Note due 2030 (see Exhibit 4.28)	8-K	6/22/2020	4.7
4.30	Tenth Supplemental Indenture, dated as of June 22, 2020, among Equinix, Inc. and U.S. Bank National Association, as trustee	8-K	6/22/2020	4.8
4.31	Form of 3.000% Senior Note due 2050 (See Exhibit 4.30)	8-K	6/22/2020	4.9
4.32	Form of Registrant's Common Stock Certificate.	10-K	12/31/2014	4.13
4.33	Description of Securities.	10-K	12/31/2019	4.31
10.1**	Form of Indemnification Agreement between the Registrant and each of its officers and directors.	S-4 (File No. 333-93749)	12/29/1999	10.5
10.2**	2000 Equity Incentive Plan, as amended.	10-K	12/31/2016	10.2
10.3**	2000 Director Option Plan, as amended.	10-K	12/31/2016	10.3
10.4**	2001 Supplemental Stock Plan, as amended.	10-K	12/31/2016	10.4
10.5**	2020 Equity Incentive Plan	DEF14A	4/27/2020	Appendix A
10.6**	Equinix, Inc. 2004 Employee Stock Purchase Plan, as amended.	10-Q	6/30/2014	10.5
10.7**	Switch & Data 2007 Stock Incentive Plan.	S-1/A (File No. 333-137607) filed by Switch & Data Facilities Company	2/5/2007	10.9
10.8**	Repatriation Agreement by and between Equinix, Inc. and Eric Schwartz dated June 5.	10-Q	6/30/2019	10.17
10.9**	2018 Form of Revenue/AFFO Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2018	10.31

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10.10**	2018 Form of TSR Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2018	10.32
10.11**	2018 Form of Time-Based Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2018	10.33
10.12**	2019 Form of Revenue/AFFO per Share Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2019	10.29
10.13**	2019 Form of TSR Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2019	10.30
10.14**	2019 Form of Time-Based Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2019	10.31
10.15**	2020 Equinix, Inc. Annual Incentive Plan.	10-Q	3/31/2020	10.18
10.16**	2020 Form of Revenue/AFFO per Share Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2020	10.19
10.17**	2020 Form of TSR Restricted Stock Unit Agreement for Executives.	10-Q	3/31/2020	10.20
10.18**	2020 Form of Time-Based Restricted Stock Agreement for Executives.	10-Q	3/31/2020	10.21
10.19	Agreement for Purchase and Sale of Shares Among RW Brasil Fundo de Investimentos em Participação, Antônio Eduardo Zago De Carvalho and Sidney Victor da Costa Breyer, as Sellers, and Equinix Brasil Participações Ltda., as Purchaser, and Equinix South America Holdings LLC., as a Party for Limited Purposes and ALOG Soluções de Tecnologia em Informática S.A. as Intervening Consenting Party dated July 18, 2014.	10-Q	9/30/2014	10.67
10.20	Share Purchase Agreement with Digital Realty Trust, L.P., relating to the sale and purchase of shares in TelecityGroup UK LON Limited, Telecity Netherlands AMS01 AMS04 BV, Equinix Real Estate (TCY AMS04) B.V. and TelecityGroup Germany Fra2 GmbH, dated May 14, 2016.	10-Q	6/30/2016	10.55
10.21	Credit Agreement dated as of December 12, 2017 among Equinix, Inc. as Borrower, The Guarantors Parties (defined therein), Bank of America, N.A., as Administrative Agent, Lender and L/C issuer, Barclays Bank PLS, Goldman Sachs Bank USA, HSBC Securities (USA) Inc. ING Capital LLC, TD Securities (USA) LLC, and Wells Fargo Bank, National Association as Co-Documentation Agents, the Other Lenders Party (defined therein) and Bank of America, N.A., Citibank, N.A., JPMorgan Chase Bank, N.A., MUFG, and RBC Capital Markets as Joint Lead Arrangers and Joint Book Runners.	10-K	12/31/2017	10.40
10.22	Consent and First Amendment to Credit Agreement, dated as of June 28, 2018 by and among Equinix, Inc. as Borrower, the Guarantors (defined therein), the Lenders (as such term is defined in the Credit Agreement referred to therein), and BANK OF AMERICA, N.A., as Administrative Agent.	10-Q	8/8/2018	10.35

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10.23	Second Amendment to Credit Agreement, dated as of July 26, 2018, by and between Equinix, Inc. as Borrower, the financial institutions defined therein, MUFG Bank, Ltd., as Technical Agent and Bank of America, N.A. as Administrative Agent, under that certain Credit Agreement dated December 12, 2017.	10-Q	8/8/2018	10.36	
10.24	Third Amendment to Credit Agreement, dated as of April 26, 2019, by and among Equinix, Inc., Delaware corporation ("Equinix" or the "Borrower"), each "Lender" (as such term is defined in the Credit Agreement referred to therein) party hereto, and BANK OF AMERICA, N.A., as Administrative Agent, under that certain Credit Agreement dated December 12, 2017.	10-Q	6/30/2019	10.34	
10.25	Credit Agreement dated April 15, 2020, by and among Equinix, as borrower, a syndicate of financial institutions, as lenders, MUFG Bank, Ltd. as administrative agent, and MUFG Union Bank, N.A., Sumitomo, Mitsui Banking Corporation, TD Securities (USA) LLC and Mizuho Bank, Ltd., as joint lead arrangers.				X
10.26**	Relocation Letter Agreement by and between Equinix, Inc. and Charles Meyers dated October 12, 2018.	10-K	2/22/2019	10.37	
10.27**	Change in Control Severance Agreement between Equinix, Inc and Mike Campbell dated October 3, 2019.	10-Q	9/30/2019	10.25	
10.28**	Change in Control Severance Agreement between Equinix, Inc and Brandi Galvin Morandi dated October 3, 2019.	10-Q	9/30/2019	10.26	
10.29**	Change in Control Severance Agreement between Equinix, Inc and Karl Strohmeyer dated October 3, 2019.	10-Q	9/30/2019	10.27	
10.30**	Change in Control Severance Agreement between Equinix, Inc and Peter Van Camp dated October 3, 2019.	10-Q	9/30/2019	10.28	
10.31**	Change in Control Severance Agreement between Equinix, Inc and Charles Meyers dated October 4, 2019.	10-Q	9/30/2019	10.29	
10.32**	Change in Control Severance Agreement between Equinix, Inc and Eric Schwartz dated October 3, 2019.	10-Q	9/30/2019	10.30	
10.33**	Change in Control Severance Agreement between Equinix, Inc and Keith Taylor dated October 3, 2019.	10-Q	9/30/2019	10.31	
10.34**	Change in Control Severance Agreement between Equinix, Inc and Sara Baack dated October 3, 2019.	10-Q	9/30/2019	10.32	
10.35**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Sara Baack dated October 3, 2019.	10-Q	9/30/2019	10.33	
10.36**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Charles Meyers dated October 4, 2019.	10-Q	9/30/2019	10.34	

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10.37**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Eric Schwartz dated October 3, 2019.	10-Q	9/30/2019	10.35	
10.38**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Keith Taylor dated October 3, 2019.	10-Q	9/30/2019	10.36	
10.39**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Mike Campbell dated October 3, 2019.	10-Q	9/30/2019	10.37	
10.40**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Brandi Galvin Morandi dated October 3, 2019.	10-Q	9/30/2019	10.38	
10.41**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Karl Strohmeyer dated October 3, 2019.	10-Q	9/30/2019	10.39	
10.42**	Side Letter Agreement Regarding RSUs between Equinix, Inc. and Peter Van Camp dated October 3, 2019.	10-Q	9/30/2019	10.40	
21.1	Subsidiaries of Equinix, Inc.				X
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.				X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.				X
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				X

\*\* Management contracts or compensation plans or arrangements in which directors or executive officers are eligible to participate.





## INDEX TO EXHIBITS

<b>Exhibit Number</b>	<b>Description of Document</b>
10.25	Credit Agreement dated April 15, 2020, by and among Equinix, as borrower, a syndicate of financial institutions, as lenders, MUFG Bank, Ltd.as administrative agent, and MUFG Union Bank, N.A., Sumitomo, Mitsui Banking Corporation, TD Securities (USA) LLC and Mizuho Bank, Ltd., as joint lead arrangers.
21.1	Subsidiaries of Equinix, Inc.
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Document.
101.LAB	Inline XBRL Taxonomy Extension Labels Document.
101. PRE	Inline XBRL Taxonomy Extension Presentation Document.
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

\*\* Management contracts or compensation plans or arrangements in which directors or executive officers are eligible to participate.

**CREDIT AGREEMENT**

Dated as of April 15, 2020

among

**EQUINIX, INC.,**  
as Borrower,

**MUFG BANK, LTD.,**  
as Administrative Agent,

**The Lenders Party Hereto,**

**SUMITOMO MITSUI BANKING CORPORATION,  
TD SECURITIES (USA) LLC, and  
MIZUHO BANK, LTD.,**  
as Co-Syndication Agents,

**BANK OF AMERICA, N.A.,  
ING BANK N.V., and  
THE BANK OF NOVA SCOTIA**  
as Co-Documentation Agents

and

**MUFG UNION BANK, N.A.,  
SUMITOMO MITSUI BANKING CORPORATION,  
TD SECURITIES (USA) LLC, and  
MIZUHO BANK, LTD.**  
as Joint Lead Arrangers and Joint Book Runners

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## EXHIBITS

### *Form of*

A	Loan Notice
B-1-3	Note
C	Compliance Certificate
D	Assignment and Assumption
E	Administrative Questionnaire
F-1-4	Tax Compliance Certificates

## CREDIT AGREEMENT

This **CREDIT AGREEMENT** (“Agreement”) is entered into as of April 15, 2020, among **EQUINIX, INC.**, a Delaware corporation (the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), **MUFG BANK, LTD.**, as Administrative Agent, **SUMITOMO MITSUI BANKING CORPORATION**, **TD SECURITIES (USA) LLC**, and **MIZUHO BANK, LTD.**, in their capacities as Co-Syndication Agents, **BANK OF AMERICA, N.A.**, **ING BANK N.V.** and **THE BANK OF NOVA SCOTIA**, in their capacities as Co-Documentation Agents, and **MUFG UNION BANK, N.A.**, **SUMITOMO MITSUI BANKING CORPORATION**, **TD SECURITIES (USA) LLC**, and **MIZUHO BANK, LTD.**, in their capacities as Joint Lead Arrangers and Joint Book Runners, with reference to the following facts:

### RECITALS

**WHEREAS**, the Borrower has requested that the Lenders provide term loan facilities, and the Lenders are willing to do so on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and provisions contained herein, the parties hereto covenant and agree as follows:

### ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

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

“2.625% Senior Notes Due 2024” means those certain 2.625% senior notes due November 2024, issued by the Borrower in November 2019, in an initial aggregate principal amount of \$1,000,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Fourth Supplemental Indenture dated as of November 18, 2019.

“2.875% Senior Notes Due 2024” means those certain 2.875% senior notes due March 2024, issued by the Borrower in March 2018, in an initial aggregate principal amount of €750,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Second Supplemental Indenture dated as of March 14, 2018.

“2.875% Senior Notes Due 2025” means those certain 2.875% senior notes due October 2025, issued by the Borrower in September 2017, in an initial aggregate principal amount of €1,000,000,000, in favor of the holders thereof pursuant to the First Base Indenture, as supplemented by a Fifth Supplemental Indenture dated as of September 20, 2017.

“2.875% Senior Notes Due 2026” means those certain 2.875% senior notes due February 2026, issued by the Borrower in December 2017, in an initial aggregate principal amount of €1,000,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Supplemental Indenture dated as of December 12, 2017.



“2.900% Senior Notes Due 2026” means those certain 2.900% senior notes due November 2026, issued by the Borrower in November 2019, in an initial aggregate principal amount of \$600,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Fifth Supplemental Indenture dated as of November 18, 2019.

“3.200% Senior Notes Due 2029” means those certain 3.200% senior notes due November 2029, issued by the Borrower in November 2019, in an initial aggregate principal amount of \$1,200,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Sixth Supplemental Indenture dated as of November 18, 2019.

“4.75% Convertible Subordinated Notes Due 2016” means those certain 4.75% convertible subordinated notes due June 2016, issued by the Borrower in June 2009, in an initial aggregate principal amount of \$373,750,000, in favor of the holders thereof pursuant to an indenture dated as of June 12, 2009, between the Borrower, as issuer, and U.S. Bank National Association, as trustee.

“5.00% Senior Notes Due 2020” means those certain 5.00% senior notes due October 2020, issued by the Borrower in April 2018, in an initial aggregate principal amount of \$150,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Third Supplemental Indenture dated as of April 2, 2018.

“5.00% Senior Notes Due 2021” means those certain 5.00% senior notes due April 2021, issued by the Borrower in April 2018, in an initial aggregate principal amount of \$150,000,000, in favor of the holders thereof pursuant to the Second Base Indenture, as supplemented by a Third Supplemental Indenture dated as of April 2, 2018.

“5.375% Senior Notes Due 2022” means those certain 5.375% senior notes due January 2022, issued by the Borrower in November 2014, in an initial aggregate principal amount of \$750,000,000, in favor of the holders thereof pursuant to the First Base Indenture, as supplemented by a First Supplemental Indenture dated as of November 20, 2014.

“5.375% Senior Notes Due 2027” means those certain 5.375% senior notes due May 2027, issued by the Borrower in March 2017, in an initial aggregate principal amount of \$1,250,000,000, in favor of the holders thereof pursuant to the First Base Indenture, as supplemented by a Fourth Supplemental Indenture dated as of March 22, 2017.

“5.875% Senior Notes Due 2026” means those certain 5.875% senior notes due January 2026, issued by the Borrower in December 2015, in an initial aggregate principal amount of \$1,100,000,000, in favor of the holders thereof pursuant to the First Base Indenture, as supplemented by a Third Supplemental Indenture dated as of December 4, 2015.

“Acquired Indebtedness” means Indebtedness (including Guarantees) of any Person existing at the time such Person becomes a Restricted Subsidiary in a transaction permitted hereunder (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Restricted Subsidiary in a transaction permitted hereunder) after the Closing Date, or Indebtedness of any Person that is assumed by any Restricted Subsidiary in connection with an acquisition of assets by such Restricted Subsidiary in an acquisition permitted hereunder; provided that such Indebtedness

exists at the time such Person becomes a Restricted Subsidiary (or is so merged or consolidated) or such assets are acquired and such Indebtedness is not created in contemplation of such Person becoming a Restricted Subsidiary (or such merger or consolidation) or such assets being acquired.

“Acquisition” means a purchase or other acquisition, direct or indirect, by any Person of all or substantially all of the assets or all or substantially all of the business of any other Person or of a line of business of any other Person (whether by acquisition of Equity Interests, assets, permitted merger or any combination thereof).

“Adjusted Consolidated Total Assets” means, as of any date of determination, the Borrower’s consolidated total assets as shown on the consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the immediately preceding fiscal year delivered to the Administrative Agent and the Lenders under Section 6.01(a); provided that if, during the fiscal year in which such date of determination occurs, any Permitted Acquisition was consummated, “Adjusted Consolidated Total Assets” shall also include the result of (a) the aggregate book value of the total assets acquired by the Borrower or its Subsidiaries pursuant to such Permitted Acquisition as of the date of such consummation minus (b) the aggregate book value of all assets sold or required to be sold as a result of such Permitted Acquisition, in each case solely to the extent that the foregoing were not included in the Borrower’s consolidated total assets as of the end of the immediately preceding fiscal year.

“Administrative Agent” means MUFG in its capacity as administrative agent under any of the Loan Documents and its successors and assigns.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an administrative questionnaire in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Aggregate DDTL Commitments” means the DDTL Commitments of all the DDTL Lenders.

“Agreement” means this Credit Agreement.

“Anti-Corruption Laws” means the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar and applicable legislation in other jurisdictions.

“Applicable Margin” means a per annum rate equal to (a) with respect to Dollar Term Loans and Delayed Draw Loans that are Eurocurrency Rate Loans, 1.75%, (b) with respect to Dollar Term Loans and Delayed Draw Loans that are Base Rate Loans, 0.75%, and (c) with respect to Euro Term Loans, 1.50%.

“Applicable Percentage” means with respect to any Appropriate Lender at any time, (a) with respect to the Dollar Term Facility or the Euro Term Facility, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments with respect to such Facility represented by such Lender’s Commitment with respect to such Facility at such time, subject to adjustment as provided in Section 2.12; provided, however, that after the Loans of any Class have been advanced, the Applicable Percentage of any Appropriate Lender with respect to such Loans shall be determined based on the percentage (carried out to the ninth decimal place) of the Outstanding Amount of such Lender’s Loans of such Class at such time and (b) with respect to the DDTL Facility, the percentage (carried out to the ninth decimal place) of (i) the sum of such Lender’s DDTL Commitment, if any, plus the outstanding principal balance of Delayed Draw Loans held by such Lender, divided by (ii) the Aggregate DDTL Commitments, if any, plus the aggregate outstanding principal balance of all Delayed Draw Loans. The initial Applicable Percentage of each Appropriate Lender with respect to each applicable Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Time” means, with respect to any borrowings and payments in Euro, the local time in the place of settlement for Euro as may be determined by the Administrative Agent to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appropriate Lender” means, at any time, with respect to any Facility, a Lender that has a Commitment with respect to such Facility, or holds a Loan with respect to such Facility at such time.

“Appropriate Required Lenders” means the Required Dollar Lenders, the Required Euro Lenders or the Required DDTL Lenders, as the context requires.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable A/R Share” means, with respect to any Subsidiary, an amount equal to the product of (a) the percentage of the Equity Interests of such Subsidiary owned directly or indirectly by the Borrower multiplied by (b) the net accounts receivable of such Subsidiary.

“Attributable Asset Share” means, with respect to any Subsidiary, an amount equal to the product of (a) the percentage of the Equity Interests of such Subsidiary owned directly or indirectly by the Borrower multiplied by (b) the total assets of such Subsidiary.

“Attributable Indebtedness” means, on any date, (a) in respect of any Finance Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Finance Lease.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2019, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Availability Period” means, in respect of the DDTL Facility, the period from and including the Closing Date to the earliest of (a) July 14, 2020, (b) the date of termination of the Aggregate DDTL Commitments pursuant to Section 2.04, and (c) the date of termination of the commitment of each Lender to make Delayed Draw Loans pursuant to Section 8.02.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by MUFG as its “prime rate,” and (c) the Eurocurrency Rate plus 1.00%. The “prime rate” is a rate set by MUFG based upon various factors including MUFG’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by MUFG shall take effect at the opening of business on the day specified in the public announcement of such change; provided that, if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. If the Base Rate is being used as

an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“Benchmark Replacement” means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for Dollar-denominated syndicated credit facilities, in the case of the Dollar Term Loans and the Delayed Draw Loans, and for Euro denominated syndicated credit facilities, in the case of the Euro Term Loans, and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment” means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities, in the case of the Dollar Term Loans and the Delayed Draw Loans, and with the applicable Unadjusted Benchmark Replacement for Euro denominated syndicated credit facilities, in the case of the Euro Term Loans at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to LIBOR:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to LIBOR:

(a) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Dollar Lenders, the Required Euro Lenders or the Required DDTL Lenders, as applicable, by notice to the Borrower, the Administrative Agent (in the case of such notice by the requisite applicable Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (a) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with Section 3.03(c) and (b) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to Section 3.03(c).

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BofA Credit Agreement” means that certain Credit Agreement, dated as of December 12, 2017, among the Borrower, Bank of America, N.A., as administrative agent thereunder, the lenders party thereto, and certain other parties thereto from time to time.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Dollar Term Borrowing, a Euro Term Borrowing or a Delayed Draw Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close in New York City or under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day; and

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan (a “Group”)) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of greater than 50% of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) any sale, lease, exchange or other transfer occurs (in one transaction or a series of related transactions) of all or substantially all of the assets of the Borrower to any Person or Group, together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Agreement); or

(c) the holders of Equity Interests of the Borrower approve any plan or proposal for the liquidation or dissolution of the Borrower (whether or not otherwise in compliance with the provisions of this Agreement).

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Dollar Term Loans, Euro Term Loans or Delayed Draw Loans, and, when used in reference to any Commitment, refers to whether such Commitment is a Dollar Term Commitment, a Euro Term Commitment or a DDTL Commitment.

“Closing Date” means the first date all of the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Commitment” means a Dollar Term Commitment, a Euro Term Commitment or a DDTL Commitment, as the context requires.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBITDA” means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for the Measurement Period most recently ended plus the sum of the following expenses (to the extent deducted in calculating such Consolidated Net Income) for such Measurement Period: (i) interest



expense, (ii) income tax expense, (iii) depreciation expense, (iv) amortization expense and (v) non-cash stock-based compensation expense. For purposes of calculating Consolidated EBITDA, Consolidated Net Income shall be determined without deduction for any of the following items: (a) noncash expenses, charges and losses (including the write-down of any unamortized transaction costs, fees, original issue or underwriting discounts and expenses as a result of the redemption, refinancing, refunding, prepayment or exchange of, or modification to the terms of, any Indebtedness, to the extent not prohibited by this Agreement) not to exceed 10% of Consolidated EBITDA (calculated before giving effect to this clause (a)) in the aggregate for the Measurement Period, (b) one-time costs, fees, original issue or underwriting discounts, premiums, expenses, charges and losses incurred in connection with any actual or proposed (1) issuance of Indebtedness or Equity Interests, (2) redemptions, refinancings, refundings, prepayments or exchanges of, or modifications to the terms of, any Indebtedness, (3) restructurings of or modifications to any operating leases, including in connection with the purchase of leased assets, (4) Acquisitions, (5) Investments or (6) Dispositions, in each case to the extent not prohibited by this Agreement (including, for the avoidance of doubt, the issuance by the Borrower of any Senior Unsecured Notes and the entry by the Borrower into this Agreement and the other Loan Documents), (c) ongoing expenses relating to the maintenance of the Borrower's status as a REIT and compliance with REIT rules and regulations, (d) any net loss from disposed, abandoned or discontinued operations or product lines but only to the extent such losses do not exceed five percent (5%) of Consolidated EBITDA (calculated before giving effect to this clause (d)) in the aggregate for the Measurement Period and (e) costs and expenses of the Borrower and its Subsidiaries associated with the conversion of the Borrower to a REIT (including, without limitation, planning and advisory costs related to the foregoing) but only to the extent such costs and expenses do not exceed \$200,000,000 in the aggregate whether incurred prior to or after the Closing Date. For purposes of calculating Consolidated EBITDA for any period in which a Permitted Acquisition has been consummated, Consolidated EBITDA shall be adjusted to include, without duplication, (A) the historical EBITDA of the Person acquired in such Permitted Acquisition for the applicable Measurement Period on a pro forma basis as if such Permitted Acquisition had been consummated on the first day of the applicable Measurement Period, as the EBITDA of such acquired Person is reflected in its historical audited financial statements for the most recently ended fiscal year, and management prepared unaudited statements for any periods following the end of such fiscal year and (B) expected cost savings (without duplication of actual cost savings or other charges or expenses that are otherwise added back in calculating Consolidated EBITDA) and synergies to the extent (x) such cost savings and synergies would be permitted to be reflected in pro forma financial information complying with the requirements of GAAP and Article 11 of Regulation S-X under the Securities Act of 1933, and as certified by a Responsible Officer of the Borrower or (y) such cost savings or synergies are factually supportable and have been realized or are reasonably expected to be realized within 365 days following such Permitted Acquisition; provided that the aggregate amount of cost savings and synergies added pursuant to this clause (B) shall not exceed fifteen percent (15%) of Consolidated EBITDA (calculated before giving effect to this clause (B)) in the aggregate for the Measurement Period; provided, further, that for addbacks to cost savings and synergies under clause (y), the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that such cost savings and synergies meet the requirements set forth in clause (y), together with reasonably detailed evidence in support thereof. In the event that there are only unaudited financial

statements or no financial statements available for such acquired Person, then the pro forma adjustments described in clause (A) above shall be made based on such unaudited financial statements or reasonable estimates as may be agreed between the Borrower and the Administrative Agent.

“Consolidated EBITDAR” means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to the sum of Consolidated EBITDA plus rent expense for the Measurement Period most recently ended. For purposes of calculating Consolidated EBITDAR for any period in which a Permitted Acquisition has been consummated, Consolidated EBITDAR shall be adjusted to include, without duplication, (A) the historical EBITDAR of the Person acquired in such Permitted Acquisition for the applicable Measurement Period on a pro forma basis as if such Permitted Acquisition had been consummated on the first day of the applicable Measurement Period, as the EBITDAR of such acquired Person is reflected in its historical audited financial statements for the most recently ended fiscal year, and management prepared unaudited statements for any periods following the end of such fiscal year and (B) expected cost savings (without duplication of actual cost savings or other charges or expenses that are otherwise added back in calculating Consolidated EBITDAR) and synergies to the extent (x) such cost savings and synergies would be permitted to be reflected in pro forma financial information complying with the requirements of GAAP and Article 11 of Regulation S-X under the Securities Act of 1933, and as certified by a Responsible Officer of the Borrower or (y) such cost savings or synergies are factually supportable and have been realized or are reasonably expected to be realized within 365 days following such Permitted Acquisition; provided that the aggregate amount of cost savings and synergies added pursuant to this clause (B) shall not exceed fifteen percent (15%) of Consolidated EBITDAR (calculated before giving effect to this clause (B)) in the aggregate for the Measurement Period; provided, further, that for addbacks to cost savings and synergies under clause (y), the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Administrative Agent, certifying that such cost savings and synergies meet the requirements set forth in clause (y), together with reasonably detailed evidence in support thereof. In the event that there are only unaudited financial statements or no financial statements available for such acquired Person, then the pro forma adjustments described in clause (A) above shall be made based on such unaudited financial statements or reasonable estimates as may be agreed between the Borrower and the Administrative Agent.

“Consolidated Fixed Charges” means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of, without duplication, (a) the current maturities of long-term debt for the next twelve months (but excluding (i) any Convertible Subordinated Notes, (ii) the current portion of the Revolving Facility (as defined in the BofA Credit Agreement), (iii) the final installment of the Term Loans (as defined in the BofA Credit Agreement), and (iv) the final installment of any Senior Unsecured Notes), (b) the principal portion of the current maturity of Finance Lease obligations for the next twelve months, (c) interest expense for the Measurement Period most recently ended, and (d) rent expense for the Measurement Period most recently ended.

“Consolidated Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDAR for the Measurement Period ending on such date *to* (b) Consolidated Fixed Charges.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum, without duplication, of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all direct obligations arising under letters of credit (including standby and commercial) and bank guaranties (but excluding any of the foregoing to the extent secured by cash collateral), (c) Attributable Indebtedness in respect of Finance Leases and Synthetic Lease Obligations, (d) all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (c) above of Persons other than the Borrower or any Subsidiary thereof, and (e) all Indebtedness of the types referred to in clauses (a) through (d) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary thereof is a general partner or joint venturer, except to the extent such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary. Notwithstanding the foregoing, as of any date of determination, for purposes of calculating the Consolidated Net Lease Adjusted Leverage Ratio or the Consolidated Lease Adjusted Secured Leverage Ratio, “Consolidated Funded Indebtedness” shall not include the outstanding principal amount of any debt securities issued by the Borrower to the extent that (i) as of such date, the Borrower shall have delivered (or the indenture trustee under the applicable indenture shall have delivered on the Borrower’s behalf) to the holders of such debt securities an irrevocable notice of redemption with respect to all of such debt securities and shall have deposited funds with the indenture trustee or into an escrow account in an amount required to effect such redemption, unless any portion of such debt securities shall not in fact be redeemed within 35 days of such notice of redemption and deposit of funds or (ii) the proceeds of such debt securities are held by the trustee of the related indenture and have not been released to the Borrower or are deposited into an escrow account pending the closing of an acquisition or the redemption of other debt securities solely until such proceeds are released, it being understood that any such proceeds shall not be included in the calculation of clause (c) of the definition of Consolidated Net Lease Adjusted Indebtedness.

“Consolidated Lease Adjusted Secured Indebtedness” means as of any date of determination, with respect to the Borrower and its Subsidiaries, the sum, without duplication, of (a) Consolidated Funded Indebtedness as of such date that is secured by a Lien, plus (b) Attributable Indebtedness in respect of Finance Leases and in respect of Synthetic Lease Obligations as of such date, plus (c) rent expense for the Measurement Period ending on such date multiplied by six (6).

“Consolidated Lease Adjusted Secured Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Lease Adjusted Secured Indebtedness as of such date of determination *to* (b) Consolidated EBITDAR for the Measurement Period ending on such date.

“Consolidated Net Income” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the net income of the Borrower and its Subsidiaries (excluding extraordinary gains and extraordinary losses) for that period.

“Consolidated Net Lease Adjusted Indebtedness” means as of any date of determination, with respect to the Borrower and its Subsidiaries, the result, without duplication, of (a) Consolidated Funded Indebtedness as of such date, plus (b) rent expense for the Measurement Period ending on such date multiplied by six (6), minus (c) the amount of unencumbered (other than by Liens permitted under clauses (a), (c) and (g) of Section 7.01) and unrestricted cash, cash equivalents, freely tradable and liquid short term investments, and freely tradable and liquid long term investments of the Borrower and its Subsidiaries as of such date.

“Consolidated Net Lease Adjusted Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Net Lease Adjusted Indebtedness as of such date of determination *to* (b) Consolidated EBITDAR for the Measurement Period ending on such date.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convertible Subordinated Notes” means any convertible subordinated notes or debentures issued by the Borrower after the date hereof, which are subordinated to the Obligations on terms no less favorable to the Lenders, in any material respect, than the 4.75% Convertible Subordinated Notes Due 2016 (as those terms were in effect and applied to the 4.75% Convertible Subordinated Notes Due 2016 prior to the repayment thereof in full on June 15, 2016).

“DDTL Commitment” means, as to each DDTL Lender, its obligation to make Delayed Draw Loans to the Borrower pursuant to Section 2.01(b), in an aggregate principal amount at any one time outstanding not to exceed the Dollar amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The DDTL Commitment of each Lender shall be reduced by the aggregate amount of Delayed Draw Loans funded by such Lender.

“DDTL Facility” means the credit facility consisting of the DDTL Commitments and outstanding Delayed Draw Loans.

“DDTL Facility Fee” has the meaning specified in Section 2.07(a).

“DDTL Lender” means, at any time, any Lender that has a DDTL Commitment or holds Delayed Draw Loans.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United

States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Margin applicable to Base Rate Loans plus (c) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.12(b), any Lender that, as determined by the Administrative Agent, (a) has failed to (i) fund all or any portion of its funding obligations hereunder, including in respect of its Loans, within two (2) Business Days of the date required to be funded by it hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any Lender that it does not intend to comply with its funding obligations, or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent), or (d) has, or has a direct or indirect parent company that has, other than via an Undisclosed Administration, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had publicly a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity) or a custodian appointed for it, or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of (x) the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority or (y) an Undisclosed Administration, in each case so long as such ownership interest or appointment (as applicable) does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent

manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.12(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Delayed Draw Borrowing” means a borrowing consisting of simultaneous Delayed Draw Loans of the same Type, in Dollars and, in the case of Delayed Draw Loans that are Eurocurrency Rate Loans, having the same Interest Period, made by each of the Lenders pursuant to Section 2.01(b).

“Delayed Draw Loan” has the meaning specified in Section 2.01(b).

“Delayed Draw Note” means a promissory note made by the Borrower in favor of a Lender evidencing Delayed Draw Loans made by such Lender, substantially in the form of Exhibit B-3.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dollar” and “\$” mean lawful money of the United States.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in Euro, the equivalent amount thereof in Dollars as determined by the Administrative Agent at such time on the basis of the Spot Rate for the purchase of Dollars with Euro.

“Dollar Term Borrowing” means a borrowing consisting of simultaneous Dollar Term Loans of the same Type, in Dollars, and, in the case of Dollar Term Loans that are Eurocurrency Rate Loans, having the same Interest Period, made by each of the Lenders on the Closing Date.

“Dollar Term Commitment” means, as to each Dollar Term Lender, its obligation to make Dollar Term Loans to the Borrower pursuant to Section 2.01(a)(i), in an aggregate principal amount at any one time outstanding not to exceed the Dollar amount set forth opposite such Lender’s name on Schedule 2.01.

“Dollar Term Facility” means, at any time, the aggregate principal amount of the Dollar Term Loans of all Dollar Term Lenders outstanding at such time.

“Dollar Term Lender” means any Lender that holds Dollar Term Loans or Dollar Term Commitments.

“Dollar Term Loans” means the term loans advanced by the Dollar Term Lenders to the Borrower in Dollars on the Closing Date pursuant to Section 2.01(a)(i) in the aggregate amount of \$391,000,000.

“Dollar Term Note” means a promissory note made by the Borrower in favor of a Dollar Term Lender evidencing Dollar Term Loans made by such Lender, substantially in the form of Exhibit B-1.

“Domestic Subsidiary” means a Subsidiary of the Borrower formed under the laws of the United States or any state thereof.

“Early Opt-in Election” means the occurrence of:

(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Dollar Lenders, the Required Euro Lenders or the Required DDTL Lenders to the Administrative Agent (with a copy to the Borrower) that the applicable requisite applicable Lenders have determined that Dollar-denominated syndicated credit facilities, in the case of the Dollar Term Loans and the Delayed Draw Loans, and Euro-denominated syndicated credit facilities, in the case of the Euro Term Loans, being executed at such time, or that include language similar to that contained in Section 3.03(c) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(b) (i) the election by the Administrative Agent or (ii) the election by the Required Dollar Lenders, the Required Euro Lenders or the Required DDTL Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the requisite applicable Lenders of written notice of such election to the Administrative Agent.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Engagement Letter” means that certain letter agreement, dated April 2, 2020, among the Borrower and the Joint Lead Arrangers.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower or any Subsidiary thereof within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a



termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Euro”, “EUR” and “€” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Euro Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in Euro as determined by the Administrative Agent at such time on the basis of the Spot Rate for the purchase of Euro with Dollars.

“Euro Term Borrowing” means a borrowing consisting of simultaneous Euro Term Loans of the same Type, in Euro, and having the same Interest Period, made by each of the Lenders on the Closing Date.

“Euro Term Commitment” means, as to each Euro Term Lender, its obligation to make Euro Term Loans to the Borrower pursuant to Section 2.01(a)(ii), in an aggregate principal amount at any one time outstanding not to exceed the Euro amount set forth opposite such Lender’s name on Schedule 2.01.

“Euro Term Facility” means, at any time, the aggregate principal amount of the Euro Term Loans of all Euro Term Lenders outstanding at such time.

“Euro Term Lender” means any Lender that holds Euro Term Loans.

“Euro Term Loan” means the term loans advanced by the Lenders to the Borrower in Euro on the Closing Date pursuant to Section 2.01(a)(ii) in the aggregate amount of €100,000,000.

“Euro Term Note” means a promissory note made by the Borrower in favor of a Euro Term Lender evidencing Euro Term Loans made by such Lender, substantially in the form of Exhibit B-2.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for deposits in the

relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; provided, that, solely with respect to First Interest Period, the Eurocurrency Rate pursuant to this clause (a) shall be the Interpolated Rate; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at approximately 11:00 a.m., London time determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day;

provided that if the Eurocurrency Rate (including any Benchmark Replacement or alternative rate of interest under Section 3.03(b)) shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate.” Eurocurrency Rate Loans may be denominated in Dollars or in Euro. All Loans denominated in Euro must be Eurocurrency Rate Loans.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any withholding Taxes imposed pursuant to FATCA.

“Facility” means the Dollar Term Facility, the Euro Term Facility or the DDTL Facility, as the context may require.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any intergovernmental agreement, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities

and implementing subsections of the Code and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to MUFG on such day on such transactions as determined by the Administrative Agent and (c) if the Federal Funds Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Federal Reserve Bank of New York’s Website” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“Fee Letter” means that certain letter agreement, dated April 2, 2020, among the Borrower, the Administrative Agent and the Left Lead Arranger.

“Finance Lease” means any lease classified as a “finance lease” under GAAP, but excluding, for the avoidance of doubt, any Operating Lease.

“First Base Indenture” means that certain Indenture dated as of November 20, 2014, between the Borrower, as issuer, and U.S. Bank National Association, as trustee.

“First Interest Period” means, (a) with respect to the Dollar Term Loans and the Euro Term Loans, the period commencing on the Closing Date and ending on April 30, 2020 and (b) with respect to any Delayed Draw Loan, the period commencing on the date of the applicable Delayed Draw Borrowing and ending on the last day of the month in which such Borrowing occurred.

“Foreign Lender” means, with respect to the Borrower or any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funds From Operations” means, with respect to any fiscal period, an amount equal to the net income (or deficit) of the Borrower and its Subsidiaries for that period computed on a

consolidated basis in accordance with GAAP, excluding gains (or losses) from sales of property, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures; provided that Funds From Operations shall exclude one-time or non-recurring charges and impairment charges, charges from the early extinguishment of indebtedness and other non-cash charges. Adjustments for unconsolidated partnerships and joint ventures will be calculated to reflect Funds From Operations on the same basis. To the extent not inconsistent with the foregoing, Funds From Operations shall be reported in accordance with the NAREIT Policy Bulletin dated April 5, 2002, as amended, restated, supplemented or otherwise modified from time to time.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum

distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hostile Acquisition” means an Acquisition of all or substantially all of the Equity Interests of a Person through a tender offer or similar solicitation of the owners of such Equity Interests which has not been approved (prior to the consummation of such Acquisition) by the board of directors (or any other applicable governing body) of such Person or by similar or other appropriate action if such Person is not a corporation, or as to which, at the time of consummation of such Acquisition, any such prior approval has been withdrawn.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable in the ordinary course of business and (ii) post-closing purchase price adjustments or earnout obligations in connection with Permitted Acquisitions, in the case of this clause (ii), until such obligations become a liability on the balance sheet of such Person in accordance with GAAP);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) obligations under Finance Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall (x) include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, except to the extent such Indebtedness is expressly made non-recourse to such Person and (y) exclude any obligations arising

under Operating Leases. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Finance Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitees” has the meaning specified in Section 10.04(b).

“Information” has the meaning specified in Section 10.07.

“Interest Payment Date” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

“Interest Period” means as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurocurrency Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Eurocurrency Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(iii) no Interest Period pertaining to any Loan shall extend beyond the Maturity Date; and

(iv) at the election of the Borrower, the Interest Period with respect to (A) the Dollar Term Loans and the Euro Term Loans applicable commencing on the Closing Date shall be the First Interest Period and (B) each Delayed Draw Loan applicable commencing on the date of the applicable Delayed Draw Borrowing shall be the First Interest Period.

“Interpolated Rate” means, at any time, with respect to the First Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBOR Screen Rate for the longest period (for which the LIBOR Screen Rate is

available for Dollars or Euro, as the case may be) that is shorter than the First Interest Period and (b) the LIBOR Screen Rate for the shortest period (for which that LIBOR Screen Rate is available for Dollars or Euro, as the case may be) that exceeds the First Interest Period, in each case, at such time. When determining the rate for a period which is less than the shortest period for which the LIBOR Screen Rate is available, the LIBOR Screen Rate for purposes of paragraph (a) above shall be deemed to be the overnight screen rate where “overnight screen rate” means the overnight rate determined by the Administrative Agent from such service as the Administrative Agent may select.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“Joint Lead Arrangers” means the Left Lead Arranger, Sumitomo Mitsui Banking Corporation, TD Securities (USA) LLC, and Mizuho Bank, Ltd., in their capacities as joint lead arrangers and joint bookrunners.

“JV Entity” means a non-wholly-owned Subsidiary or joint venture in which the Borrower or one or more of its Subsidiaries is a joint venturer with another Person.

“JV Interest” means an Equity Interest in a JV Entity.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Left Lead Arranger” means MUFG Union Bank, N.A., in its capacity as left lead arranger and joint book runner.

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate.

Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“LIBOR” has the meaning specified in the definition of Eurocurrency Rate.

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Finance Lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Dollar Term Loan, Euro Term Loan or a Delayed Draw Loan.

“Loan Documents” means this Agreement, each Note, the Fee Letter, the Engagement Letter, each Loan Notice, and any and all other agreements, documents and instruments executed and/or delivered by or on behalf of or in support of the Borrower to the Administrative Agent or any Lender or their respective authorized designees evidencing or otherwise relating to any of the Loans hereunder.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of the Borrower to perform its obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of any Loan Document.

“Material Domestic Subsidiary” means, as at any date of determination (determined in accordance with GAAP), any Domestic Subsidiary or group of Domestic Subsidiaries (other than joint ventures) whose net accounts receivable (after intercompany eliminations and excluding Real



Property Lease Accounts), individually or collectively (as the case may be), equal or exceed 10.0% of all net accounts receivable of the Borrower and its Domestic Subsidiaries (after intercompany eliminations and excluding Real Property Lease Accounts) as of the end of the most recently completed fiscal quarter of the Borrower.

“Material Subsidiary” means, as at any date of determination (determined in accordance with GAAP), any Subsidiary or group of Subsidiaries of the Borrower (a) whose total assets, individually or collectively (as the case may be), equal or exceed 20.0% of the consolidated total assets (after intercompany eliminations) of the Borrower and its Subsidiaries as of the end of the most recently completed fiscal quarter of the Borrower, or (b) whose revenue, individually or collectively (as the case may be), for the Measurement Period most recently ended equals or exceeds 10.0% of the consolidated revenue (after intercompany eliminations) of the Borrower and its Subsidiaries for such Measurement Period.

“Maturity Date” means April 14, 2021; provided, however, that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

“Measurement Period” means, at any date of determination, the rolling two most recently completed fiscal quarters of the Borrower, annualized.

“MUFG” means MUFG Bank, Ltd. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a Dollar Term Note, a Euro Term Note or a Delayed Draw Note, as the context may require.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, the Borrower arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Lease” means any lease classified as an “operating lease” under GAAP.

“Optional Prepayment Notice” has the meaning specified in Section 2.03.

“Optional Termination/Reduction Notice” has the meaning specified in Section 2.04(a).

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means, on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount of the Loans after giving effect to any borrowings and prepayments or repayments of such Loans occurring on such date.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in Euro, the rate of interest per annum at which overnight deposits in Euro, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of MUFG in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Participating Member State” means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Acquisition” means any Acquisition by the Borrower or any of its Subsidiaries, provided that: (a) such Investment is not a Hostile Acquisition; and (b) after giving pro forma effect to the consummation of such Acquisition, (i) the Borrower shall be in compliance with each of the financial covenants set forth in Section 7.11, and (ii) no Default or Event of Default shall have occurred and be continuing or would result therefrom.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” has the meaning specified in Section 6.02.

“Real Property Lease Accounts” means those accounts receivable of the Borrower arising from the lease or rental of real property by the Borrower to the extent such accounts receivable comprise collateral for a third party real property lender.

“Recipient” means the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder.

“Register” has the meaning specified in Section 10.06(c).

“REIT” means a Person that is qualified to be treated for tax purposes as a real estate investment trust under Sections 856-860 of the Code.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“Required DDTL Lenders” means, as of any date of determination, at least two DDTL Lenders holding more than 50.00% of the sum of the Aggregate DDTL Commitments and the Outstanding Amount of all Delayed Draw Loans or, if the DDTL Commitment of each Lender has been terminated pursuant to Section 8.02, at least two DDTL Lenders holding in the aggregate more than 50.00% of the Outstanding Amount of all Delayed Draw Loans at such time. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required DDTL Lenders at any time.

“Required Dollar Lenders” means, as of any date of determination, at least two Dollar Term Lenders holding more than 50.00% of the Outstanding Amount of the Dollar Term Loans; provided that the Dollar Term Loans held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Dollar Lenders.

“Required Euro Lenders” means, as of any date of determination, at least two Euro Term Lenders holding more than 50.00% of the Outstanding Amount of the Euro Term Loans; provided that the Euro Term Loans held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Euro Lenders.

“Required Lenders” means, as of any date of determination, at least two Lenders holding more than 50.00% of the sum of the Aggregate Commitments and the Outstanding Amount of all Loans or, if the Commitments of each Lender have been terminated pursuant to Section 8.02, at least two Lenders holding in the aggregate more than 50.00% of the Outstanding Amount of all Loans at such time. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Resignation Effective Date” has the meaning specified in Section 9.06(a).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means the chief executive officer, chief financial officer, treasurer or vice president-tax and treasury of the Borrower and, solely for purposes of notices given pursuant to Article II, any other officer of the Borrower so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the Borrower designated in or pursuant to an agreement between the Borrower and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“Restricted Subsidiary” means any Subsidiary of the Borrower that is not an Unrestricted Subsidiary.

“Sale-Leaseback Transaction” means, with respect to any Person, the sale of property owned by such Person (the “S-L Seller”) to another Person (the “S-L Buyer”), together with the substantially concurrent leasing of such property by the S-L Buyer to the S-L Seller.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in Euro, same day or other funds as may be determined by the Administrative Agent to be customary in the place of disbursement or payment for the settlement of international banking transactions in Euro.

“Sanction(s)” means any sanction or embargo imposed, administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the Hong Kong Government, the European Union or Her Majesty’s Treasury.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Second Base Indenture” means that certain Indenture dated as of December 12, 2017, between the Borrower, as issuer, and U.S. Bank National Association, as trustee.

“Senior Notes Indentures” means, collectively, the Indentures (together with any Supplemental Indentures thereto) entered into by the Borrower in connection with the Senior Unsecured Notes.

“Senior Unsecured Notes” means, collectively, (a) the 5.00% Senior Notes Due 2020, (b) the 5.00% Senior Notes Due 2021, (c) the 5.375% Senior Notes Due 2022, (d) the 2.875% Senior Notes Due 2024, (e) the 2.625% Senior Notes Due 2024, (f) the 2.875% Senior Notes Due 2025, (g) the 2.875% Senior Notes Due 2026, (h) the 5.875% Senior Notes Due 2026, (i) the 2.900% Senior Notes Due 2026, (j) the 5.375% Senior Notes Due 2027, (k) the 3.200% Senior Notes Due 2029, (l) any other senior unsecured notes issued by the Borrower and not otherwise prohibited hereunder, and (m) any refinancings or replacements thereof.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York’s Website.

“Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), and other similar assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Total Credit Exposure” means, as to any Lender at any time, the sum of the unused Commitments and the outstanding Loans of such Lender at such time.

“Transfer” has the meaning specified in Section 7.05.

“Type” means with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes

certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“Undisclosed Administration” means, in relation to a Lender or its direct or indirect parent company that is a solvent person, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent company is subject to home jurisdiction, if applicable law requires that such appointment not be disclosed.

“United States” and “U.S.” mean the United States of America.

“Unrestricted Subsidiary” means any Subsidiary of the Borrower designated as such on Schedule 6.13 hereto as of the Closing Date, or after the Closing Date pursuant to Section 6.13.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(III).

“wholly-owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (a) director’s qualifying shares and (b) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**1.02. Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:



(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company or limited partnership, or an allocation of assets to a series of a limited liability company or limited partnership (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company or limited partnership shall constitute a separate Person hereunder (and each division of any limited liability company or limited partnership that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

### **1.03. Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial statements, financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time,

applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded and (ii) for the avoidance of doubt, all such determinations and computations shall be made giving effect to the implementation of FASB ASC 842.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04. Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05. Currency Equivalents. (I)** Except for purposes of financial statements delivered by the Borrower hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of Euro for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent.

(a) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan an amount, such as a Commitment or a required minimum or multiple amount, is expressed in Dollars, but such Borrowing or Eurocurrency Rate Loan is denominated in Euro, such amount shall be the Euro Equivalent of such Dollar amount (rounded to the nearest unit of Euro, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent.

(b) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability, with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any comparable or successor rate thereto.

**1.06. Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**ARTICLE II.  
THE COMMITMENTS AND LOANS**

**2.01. Loans.**

(a) The Initial Term Borrowings.

(i) Subject to the terms and conditions set forth herein, each Dollar Term Lender with a Dollar Term Commitment severally agrees to make a Dollar Term Loan to the Borrower, in Dollars, on the Closing Date, in an amount not to exceed such Lender's Applicable Percentage of the aggregate amount of the Dollar Term Commitments at such time. The Dollar Term Borrowing shall consist of Dollar Term Loans made simultaneously by the applicable Lenders in accordance with their respective Applicable Percentages of the aggregate amount of the Dollar Term Commitments at such time. Amounts borrowed under this Section 2.01(a)(i) and repaid or prepaid may not be reborrowed. Dollar Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

(ii) Subject to the terms and conditions set forth herein, each Euro Term Lender with a Euro Term Commitment severally agrees to make a Euro Term Loan to the Borrower, in Euro, on the Closing Date, in an amount not to exceed such Lender's Applicable Percentage of the aggregate amount of the Euro Term Commitments at such time. The Euro Term Borrowing shall consist of Euro Term Loans made simultaneously by the applicable Lenders in accordance with their respective Applicable Percentages of the aggregate amount of the Euro Term Commitments at such time. Amounts borrowed under this Section 2.01(a)(ii) and repaid or prepaid may not be reborrowed. All Euro Term Loans shall be Eurocurrency Rate Loans, as further provided herein.

(b) The Delayed Draw Borrowings. Subject to the terms and conditions set forth herein, each DDTL Lender severally agrees to make delayed draw term loans (each such loan, a "Delayed Draw Loan") to the Borrower in Dollars from time to time, on any Business Day during the Availability Period but on not more than three (3) separate occasions, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's DDTL Commitment at such time. Each Delayed Draw Borrowing shall be in a principal amount of at least \$50,000,000 and shall consist of Delayed Draw Loans made simultaneously by the DDTL Lenders in accordance with their respective Applicable Percentages of the Aggregate DDTL Commitments at such time. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Delayed Draw Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

**2.02. Borrowings, Conversions and Continuations of Loans.**

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's delivery of an irrevocable Loan Notice to the Administrative Agent. Each such Loan Notice must be received by the Administrative Agent not later than 1:00 p.m. (or in the case of (A) the Borrowings made on the Closing Date, not later than 10:00 p.m. on April 9, 2020, and (B) clause (iii) below, not later than 10:00 a.m.): (i) three (3) Business Days prior to the requested date of any Borrowing of,

conversion to or continuation of Eurocurrency Rate Loans denominated in Dollars or of any conversion of Eurocurrency Rate Loans denominated in Dollars to Base Rate Loans, (ii) four (4) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in Euro, or (iii) on the requested date of any Borrowing of Base Rate Loans. Except as provided in Section 2.01(b), each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice shall specify (1) the applicable Facility, (2) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (3) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (4) the principal amount of Loans to be borrowed, converted or continued, (5) in the case of Loans in Dollars, the Type of Loans to be borrowed or to which existing Loans are to be converted and (6) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice, then the applicable Loans shall be made as Base Rate Loans in Dollars. If the Borrower fails to give a timely Loan Notice requesting a continuation or conversion of Eurocurrency Rate Loans, such Eurocurrency Rate Loans shall be automatically continued for an Interest Period of one month. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be prepaid or repaid in the original currency of such Loan.

(b) Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount (and currency) of its Applicable Percentage of the applicable Loan, and if no timely Loan Notice of a continuation of Eurocurrency Rate Loans is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic continuation of such Eurocurrency Rate Loans, in each case as described in the preceding subsection. In the case of a Borrowing, each Appropriate Lender shall make the amount of its applicable Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 3:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan denominated in Euro, in each case on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, in the case of the Dollar Term Borrowing and the Euro Term Borrowing, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, or (i) in the case of Loans in Dollars, converted to or continued as Eurocurrency Rate Loans without the consent of the Appropriate Required Lenders or (ii) in the case of Loans in Euro, converted or continued as Eurocurrency Rate

Loans with an Interest Period of more than one month if the Required Euro Lenders so notify the Borrower. During the existence of a Default, any Loans that are continued or converted to Eurocurrency Rate Loans as provided in this clause (c), unless the Appropriate Required Lenders shall otherwise consent, shall have a one-month Interest Period.

(d) The Administrative Agent shall promptly notify the Borrower and the Appropriate Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Appropriate Lenders of any change in MUFG's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect in respect of the Facilities.

**2.03. Optional Prepayments of Loans.** The Borrower shall have the right at any time to prepay the Dollar Term Loans, the Euro Term Loans or the Delayed Draw Loans on or before the Maturity Date as a whole, or in part, by providing written notice (an "Optional Prepayment Notice") to the Administrative Agent no later than 1:00 p.m. three (3) Business Days prior to the date of such prepayment, without premium or penalty, provided that, subject to compliance with Section 3.05, (a) each partial prepayment shall be in principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof, and (b) each partial prepayment shall be allocated among the Appropriate Lenders in accordance with such Lender's Applicable Percentage of the applicable Loans. Each such Optional Prepayment Notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. Each Optional Prepayment Notice given under this Section 2.03 shall be irrevocable; provided, however, that any such Optional Prepayment Notice may state that such Optional Prepayment Notice is conditioned upon the effectiveness of other credit facilities or acquisitions or the receipt of net proceeds from the issuance of Equity Interests or incurrence of Indebtedness by the Borrower, in which case, such Optional Prepayment Notice may be revoked by the Borrower giving written notice to the Administrative Agent on or prior to the date for prepayment specified in such Optional Prepayment Notice if such condition is not satisfied (and for the avoidance of doubt, the Borrower shall remain obligated pursuant to the terms of this Agreement for any cost, expense or loss (including those arising under Sections 3.05 and 10.04) incurred by the Administrative Agent, any Lender or other Person in connection with any Optional Prepayment Notice or revocation thereof). If an Optional Prepayment Notice is given and has not been revoked by the Borrower in accordance with the proviso to the immediately preceding sentence, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal of the Loans hereunder shall include all interest accrued to the date of prepayment. No amount repaid with respect to the Loans may be reborrowed.

#### **2.04. Termination or Reduction of Commitments.**

(a) Optional. The Borrower may, upon written notice (an “Optional Termination/Reduction Notice”) to the Administrative Agent, terminate the Aggregate DDTL Commitments, or from time to time permanently reduce the Aggregate DDTL Commitments; provided that (i) any such Optional Termination/Reduction Notice shall be received by the Administrative Agent not later than 1:00 p.m. five (5) Business Days prior to the date of termination or reduction, and (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof. Each Optional Termination/Reduction Notice shall be irrevocable; provided, however, that any such Optional Termination/Reduction Notice may state that such Optional Termination/Reduction Notice is conditioned upon the effectiveness of other credit facilities or acquisitions or the receipt of net proceeds from the issuance of Equity Interests or incurrence of Indebtedness by the Borrower, in which case, such Optional Termination/Reduction Notice may be revoked by the Borrower giving written notice to the Administrative Agent on or prior to the date for prepayment specified in such Optional Termination/Reduction Notice if such condition is not satisfied (and for the avoidance of doubt, the Borrower shall remain obligated pursuant to the terms of this Agreement for any cost, expense or loss (including those arising under Section 10.04) incurred by the Administrative Agent, any Lender or other Person in connection with any Optional Termination/Reduction Notice or revocation thereof). The Administrative Agent will promptly notify the DDTL Lenders of any such notice of termination or reduction of the Aggregate DDTL Commitments. Any reduction of the Aggregate DDTL Commitments shall be applied to the DDTL Commitment of each DDTL Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate DDTL Commitments shall be paid on the effective date of such termination.

(b) Mandatory. The aggregate Dollar Term Commitments and Euro Term Commitments, respectively, shall be automatically and permanently reduced to zero upon the making of the Dollar Term Loans and Euro Term Loans, respectively, on the Closing Date.

**2.05. Repayment of Loans.** The Borrower shall repay to the Appropriate Lenders on the Maturity Date the aggregate principal amount of Dollar Term Loans, Euro Term Loans and Delayed Draw Loans, as applicable, outstanding on such date.

#### **2.06. Interest.**

(a) Subject to the provisions of subsection (b) below, (i) each Dollar Term Loan or Delayed Draw Loan that is a Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Margin; (ii) each Dollar Term Loan or Delayed Draw Loan that is a Base Rate Loan shall bear interest on the outstanding principal amount thereof from the Closing Date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iii) each Euro Term Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Margin.

(b) (I) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(i) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

#### **2.07. Fees.**

(a) DDTL Facility Fee. The Borrower shall pay to the Administrative Agent, for the account of each DDTL Lender in accordance with its Applicable Percentage, a facility fee (the "DDTL Facility Fee") in Dollars in an amount equal to 0.20% per annum on the actual daily unused amount of the Aggregate DDTL Commitments during the period from the Closing Date to but excluding the last day of the Availability Period. The DDTL Facility Fee shall be due and payable quarterly in arrears on the last Business Day of each calendar quarter following the date hereof and on the last day of the Availability Period.

(b) Other Fees. The Borrower shall pay to the Administrative Agent and each Joint Lead Arranger, as applicable, for its own account, fees in the amounts and at the times specified in the Fee Letter or the Engagement Letter, as applicable. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.08. Computation of Interest and Fees.** All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the

basis of a 365-day year), or, in the case of interest in respect of Loans denominated in Euro as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.09. Evidence of Debt.** The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender a Note or Notes, which shall evidence such Lender's applicable Loans in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

**2.10. Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in the currency in which such Loan was made and in Same Day Funds not later than 3:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 3:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 2:00 p.m. on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or,



in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Appropriate Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Loan set forth in Article IV are not satisfied or waived in accordance with the terms hereof or thereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 10.04(c), as applicable, are several and not joint. The failure of any Appropriate Lender to make any Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Appropriate Lender of its

corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make any Loan or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

**2.11. Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the applicable Loans of the other Appropriate Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Appropriate Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective applicable Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

**2.12. Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be

restricted as set forth in the definitions of “Required Lenders”, “Required DDTL Lenders”, “Required Dollar Lenders”, “Required Euro Lenders”, and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender’s potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; fifth, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.12(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender shall not be entitled to receive any DDTL Facility Fee pursuant to Section 2.07(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender for any period during which that Lender is a Defaulting Lender).

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other

actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

**ARTICLE III.**  
**ARTICLE III.TAXES, YIELD PROTECTION AND ILLEGALITY**

**3.01. Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. (I) Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the Withholding Agent shall be entitled to make such deduction or withholding.

(i) If any Withholding Agent shall be required by any applicable Laws to withhold or deduct any Taxes from any payment, then (A) such Withholding Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required, (B) such Withholding Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable

expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law or the taxing authorities of a jurisdiction pursuant to such applicable law or reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative

Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation either (A) set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below or (B) required by applicable law other than the Code or the taxing authorities of the jurisdiction pursuant to such applicable law to comply with the requirements for exemption or reduction of withholding tax in that jurisdiction) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

- (I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
- (II) executed copies of IRS Form W-8ECI;
- (III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower

within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E; or

- (IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it

shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds, Etc. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund or credit in lieu of a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(h) For the purposes of this Section 3.01, the term "applicable law" includes FATCA.

**3.02. Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans (whether denominated in Dollars or Euro) whose interest is determined by reference to the Eurocurrency Rate, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or Euro in the London or other applicable offshore interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Base Rate Loans to Eurocurrency Rate Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base



Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, as the case may be, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

### **3.03. Inability to Determine Rates.**

(a) If in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (x) deposits (whether in Dollars or Euro) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, or (y) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or Euro) or in connection with an existing or proposed Eurocurrency Rate Loan or the Eurocurrency Rate component of the Base Rate, or (ii) the Appropriate Required Lenders determine that for any reason the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or any conversion or continuation thereof does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (A) the obligation of the Appropriate Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (B) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Appropriate Required Lenders) revokes such notice. Upon receipt of such notice, (1) in the case of Dollar Term Loans or Delayed Draw Loans, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein, and (2) in the event an alternative rate cannot be determined in accordance with clause (b) below, in the case of Euro Term Loans, the Borrower shall prepay such Loans at the end of the then current Interest Period for such Loans. Upon any such prepayment or

conversion, as the case may be, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

(b) Notwithstanding the foregoing, in the case of a request for or conversion or continuation of a Eurocurrency Rate Loan in Euro as to which the Administrative Agent or the Required Euro Lenders, as applicable, have made the determination described in clause (a) above (in each case, for the avoidance of doubt, after applying any Benchmark Replacement, if applicable), (i) the Borrower shall be deemed to have requested a Eurocurrency Rate Loan or conversion or continuation, as applicable, in Euro (the “Impacted Loans”) with the next shortest Interest Period available as to which no such determination under clause (a) above would be made, and (ii) (x) if no such Interest Period is available, the Administrative Agent and the Borrower, with the agreement of the Required Euro Lenders may establish an alternative interest rate for the Impacted Loans, and (y) if the Administrative Agent, the Borrower and the Required Euro Lenders are unable to agree on such an alternative rate of interest, the Administrative Agent, with the consent of the Required Euro Lenders, may establish an alternative interest rate for the Impacted Loans. Such alternative rate of interest as determined in accordance with clause (ii) above shall apply with respect to the Impacted Loans until (A) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) above, (B) the Required Euro Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans (in which case the Required Euro Lenders shall determine an appropriate alternative rate of interest in accordance with clause (ii)(y) above), or (C) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof, and in the case of subclause (C), the Impacted Loans shall be repaid as provided in subsection (a) above.

(c) Benchmark Replacement.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Dollar Lenders, the Required DDTL Lenders and the Required Euro Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Dollar Lenders, the Required DDTL Lenders and the Required Euro Lenders have delivered to the Administrative Agent written notice that such Lenders accept such amendment. No replacement of LIBOR with a Benchmark Replacement

pursuant to this Section 3.03(c) will occur prior to the applicable Benchmark Transition Start Date.

(ii) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 3.03(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).

(iv) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (A) in the case of Dollar Term Loans or Delayed Draw Loans, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein, and (B) in the case of Euro Term Loans, (x) the Administrative Agent and the Borrower, with the agreement of the Required Euro Lenders, may establish an alternative interest rate for the Euro Term Loans, and (y) if the Administrative Agent, the Borrower and the Required Euro Lenders are unable to agree on such an alternative rate of interest, the Administrative Agent, with the consent of the Required Euro Lenders, may establish an alternative interest rate for the Euro Term Loans. Such alternative rate of interest as determined in accordance with subclause (B) above shall apply with respect to the Euro Term Loans until the earlier of (1) the replacement of LIBOR for the Euro Term Loans with a Benchmark Replacement pursuant to this Section 3.03(c), (2) the Required Euro Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Euro Loans (in which case the Required Euro Lenders shall determine an appropriate alternative rate of interest in accordance with clause (y) above) and (3) any Euro Term Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Euro Term Lender or its applicable Lending Office to make, maintain or fund Euro Term Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material

restrictions on the authority of such Euro Term Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof, and in the case of subclause (3), the Borrower shall prepay all Euro Term Loans and all accrued interest thereon at the end of the then current Interest Period for such Euro Term Loans.

#### **3.04. Increased Costs; Reserves on Eurocurrency Rate Loans.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e), other than as set forth below);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurocurrency Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive

absent manifest error (it being understood that no Lender shall be required to disclose (i) any confidential or price sensitive information or (ii) any information to the extent prohibited by applicable law). The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurocurrency Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided that the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

**3.05. Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any failure by the Borrower to make payment of any Loan (or interest due thereon) denominated in Euro on its scheduled due date or, in the case of any Loan, any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss of anticipated profits, any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London or other applicable offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

### **3.06. Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. Each Lender may make any Loan to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Loan in accordance with the terms of this Agreement. If (i) any Lender requests compensation under Section 3.04, (ii) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or (iii) any Lender gives a notice pursuant to Section 3.02, then such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (A) would eliminate or reduce the amounts payable pursuant to Sections 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (B) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 10.13.

**3.07. Survival.** All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

## **ARTICLE IV. CONDITIONS PRECEDENT TO LOANS**

**4.01. Conditions of Initial Loans.** The obligations of each Lender to make its initial Loans hereunder are subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) Notes executed by the Borrower in favor of each Lender requesting Notes;

(iii) a certificate from the secretary or assistant secretary of the Borrower (A) attesting to the resolutions of the Borrower's Board of Directors, authorizing its execution, delivery, and performance of this Agreement and any other Loan Documents, (B) evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents, and (C) certifying as true, correct and complete, copies of the Borrower's Organization Documents, as amended, modified, or supplemented to the date hereof;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Borrower, addressed to the Administrative Agent and each Lender and in form and substance satisfactory to the Administrative Agent;

(vi) a certificate of a Responsible Officer (x) of the Borrower either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by the Borrower and the validity against the Borrower of the Loan Documents, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required and (y) of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(vii) lien search results, dated as of a recent date, together with copies of all effective Uniform Commercial Code financing statements that name the Borrower as debtor; and

(viii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders reasonably may require.

(b) Any fees required to be paid to the Administrative Agent, the Joint Lead Arrangers or the Lenders on or before the Closing Date shall have been paid.

(c) The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(d) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least five (5) days prior to the Closing Date.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02. Conditions to All Borrowings.** The obligation of each Lender to honor any Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Borrowing, except (i) for representations and warranties which are qualified by the inclusion of a materiality standard, which representations and warranties shall be true and correct in all respects, and (ii) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default or Event of Default shall exist or would result from such proposed Borrowing or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Loan Notice in accordance with the requirements hereof.



Each Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing.

## ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

**5.01. Existence, Qualification and Power.** The Borrower and each Restricted Subsidiary (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) with respect to the Borrower only, execute, deliver and perform its obligations under the Loan Documents, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except (x) in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, and (y) in the case referred to in clause (a) with respect to any Restricted Subsidiary, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02. Authorization; No Contravention.** The execution, delivery and performance by the Borrower of each Loan Document, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Borrower's Organization Documents; (b) except as could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which the Borrower is a party or affecting the Borrower or the properties of the Borrower or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which the Borrower or its property is subject; or (c) except as could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, violate any Law.

**5.03. Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Borrower of this Agreement or any other Loan Document.

**5.04. Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by the Borrower. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

#### **5.05. Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except, with respect to GAAP application only, as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for material taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheets of the Borrower and its Subsidiaries delivered pursuant to Section 6.01(b), and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on the applicable date thereof, when delivered, (i) have been prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

**5.06. Litigation.** Except as disclosed in the Borrower's public filings with the SEC prior to the Closing Date, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Restricted Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

**5.07. No Default.** Neither the Borrower nor any Restricted Subsidiary is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08. Ownership of Property; Liens.** The Borrower and each of its Restricted Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Borrower and its Restricted Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09. Environmental Compliance.** The Borrower conducts in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on the Borrower and its Restricted Subsidiaries' respective businesses, operations and properties, and as a result thereof the Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10. Insurance.** The properties of the Borrower and its Restricted Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and retentions and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or its Restricted Subsidiaries operate.

**5.11. Taxes.** The Borrower and its Restricted Subsidiaries have filed all Federal and state income and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. There is no proposed tax assessment against the Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither the Borrower nor any wholly-owned Subsidiary thereof is party to any tax sharing agreement other than taxing sharing agreements solely among one or more of the Borrower and its past or present Affiliates (other than shareholders, directors or officers).

**5.12. ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter (or may rely on an opinion letter) from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no non-exempt prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate

has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and none of the Borrower or any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) none of the Borrower or any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) none of the Borrower or any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) As of the Closing Date and throughout the term of this Agreement, at least one of the following is and will be true with respect to the Borrower:

(i) the Borrower is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to the Borrower’s entering into and performance of this Agreement, the other Loan Documents, the Loans, or the Commitments and each action or obligation hereunder and thereunder, or

(iii) (A) the Borrower is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Borrower to enter into and perform this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder, (C) the entering into and performance of this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder, each satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of the Borrower, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to the Borrower’s entering into and performance of this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and the Borrower.

(e) In addition, unless clause (d)(i) above is true with respect to the Borrower or the Borrower has not provided another representation, warranty and covenant as described in clause (d)(iv) above, the Borrower further represents and warrants, as of the date hereof and throughout the term of this Agreement, that:

(i) none of the Administrative Agent, any Lender, the Left Lead Arranger, any other Joint Lead Arranger or any Affiliate of the foregoing is a fiduciary with respect to the assets of the Borrower (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of the Borrower with respect to the entrance into and performance of this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of the Borrower with respect to the entrance into and performance of this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of the Borrower with respect to the entrance into and performance of this Agreement, any documents related to this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder is a fiduciary under ERISA or the Code, or both, with respect to this Agreement, the other Loan Documents, the Loans or the Commitments and each action or obligation hereunder and thereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent, the Left Lead Arranger, any other Joint Lead Arranger, any Lender or any Affiliates of the foregoing for investment advice (as opposed to other services) in connection with the transactions contemplated hereby or by any Loan Document.

**5.13. Subsidiaries; Equity Interests.** As of the Closing Date, except for currently inactive subsidiaries, (a) the Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13 and (b) all of the outstanding Equity Interests in each wholly-owned Subsidiary have been validly issued, are fully paid and nonassessable and are owned by the Borrower or a Subsidiary thereof free and clear of all Liens (other than Liens expressly permitted by Section 7.01). As of the Closing Date, the Borrower has no equity investments in any other corporation or entity

other than (i) investments held in the ordinary course of business in or through money market funds, mutual funds, investment or brokerages accounts and other similar types of investment vehicles and accounts and (ii) those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity Interests in the Borrower have been validly issued and are fully paid and nonassessable. As of the Closing Date, (x) the Unrestricted Subsidiaries are set forth on Schedule 6.13, (y) the aggregate Attributable Asset Share of all Unrestricted Subsidiaries does not exceed 10% of the consolidated total assets of the Borrower and its Subsidiaries, and (z) the aggregate Attributable A/R Share of all Unrestricted Subsidiaries does not exceed 10% of the net accounts receivable of the Borrower and its Subsidiaries.

**5.14. Margin Regulations; Investment Company Act.**

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) The Borrower is not, and is not required to be, registered as an “investment company” under the Investment Company Act of 1940.

**5.15. Disclosure.** No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, (a) with respect to any report, financial statement, certificate or other information concerning the target of any Permitted Acquisition, the Borrower, in each case, makes such representation only to the best of its knowledge and (b) with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.16. Compliance with Laws.** The Borrower and each Restricted Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17. Taxpayer Identification Number.** The Borrower’s true and correct United States taxpayer identification number is set forth on Schedule 10.02.

**5.18. REIT Status.** The Borrower (a) qualifies as a REIT (without regard to any election requirement relating to the same) and (b) is in compliance with all other requirements and conditions imposed under the Code to allow it to maintain its status as a REIT.

**5.19. OFAC and Sanctions.** Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower or any of its Subsidiaries, any of their directors, officers or employees (a) is an individual or entity that is, or is controlled or 50% or more owned currently by one or more individuals or entities that are, the subject of any Sanctions or (b) is located, organized or resident in a Designated Jurisdiction. No Loan, nor the proceeds from any Loan, have been used, directly or indirectly, to lend, contribute, provide, or have otherwise been made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person to the extent that Person is located, organized or resident in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that could reasonably be expected to result in any violation of Sanctions by any party to this Agreement or any other Loan Document.

**5.20. Anti-Corruption Laws.** The Borrower, its Subsidiaries, their respective officers, directors and employees, and, to the knowledge of the Borrower, the Borrower's and its Subsidiaries' agents acting within the scope of their relationships with the Borrower or its Subsidiaries, have conducted their businesses in material compliance with applicable Anti-Corruption Laws and have instituted and maintained policies and procedures reasonably designed to promote and achieve compliance with such laws.

**5.21. Affected Financial Institutions.** The Borrower is not an Affected Financial Institution.

## ARTICLE VI. AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each Restricted Subsidiary to:

**6.01. Financial Statements.** Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Borrower (or such later date as may be permitted after filing a single applicable request for extension with the SEC and receiving such extension within such 90 days after such fiscal year end, which later date shall not exceed 120 days after such fiscal year end), commencing with the fiscal year ending December 31, 2020, the audited and unqualified annual consolidated financial statements of the Borrower, accompanied by a report and opinion thereon of an independent certified public accountant of nationally recognized standing;

(b) as soon as available, but in any event within 45 days after the end of each fiscal quarter of the Borrower (or such later date as may be permitted after filing a single applicable request for extension with the SEC and receiving such extension within such 45 days after such fiscal quarter end, which later date shall not exceed 75 days after such fiscal quarter end) (but excluding the last fiscal quarter of the Borrower's fiscal year), commencing with the fiscal quarter ending March 31, 2020, quarterly company-prepared consolidated financial statements of the Borrower, certified and dated by a Responsible Officer of the Borrower; and

(c) copies of the Form 10-K Annual Report and Form 10-Q Quarterly Report for the Borrower concurrent with the date of filing with the SEC.

**6.02. Certificates; Other Information.** Deliver to the Administrative Agent and each Lender, in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a Compliance Certificate of the Borrower, signed by a Responsible Officer of the Borrower, and setting forth, among other things, (i) the information and computations (in sufficient detail) to establish compliance with all financial covenants at the end of the period covered by the financial statements then being furnished, and (ii) whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any Default or Event of Default under this Agreement and, if any such Default or Event of Default exists, specifying the nature thereof and the action the Borrower is taking and proposes to take with respect thereto;

(b) promptly upon any request by the Administrative Agent or any Lender (but no more frequently than twice per each fiscal year of the Borrower unless an Event of Default has occurred and is continuing), such other books, records, statements, lists of property and accounts, budgets, forecasts or reports as to the Borrower as the Administrative Agent or such Lender may reasonably request;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Act; and

(e) promptly, such additional information regarding the business or financial affairs of the Borrower or any wholly-owned Restricted Subsidiary (and with respect to any non-wholly-owned Restricted Subsidiary, such additional information regarding its business or financial affairs as is reasonably available), or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on its website on the Internet at the Borrower’s website address of www.equinox.com (or such other website address the Borrower may provide to the Administrative Agent and each Lender in writing from time to time); provided that: (i) to the extent the Administrative Agent or any Lender is otherwise unable to receive any such



electronically delivered documents, the Borrower shall, upon request by the Administrative Agent or such Lender, deliver paper copies of such documents to such Person until a written request to cease delivering paper copies is given by such Person, and (ii) the Borrower shall notify the Administrative Agent and each Lender (by electronic mail) of the posting of any such documents or provide to the Administrative Agent and the Lenders by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (A) the Administrative Agent and/or the Left Lead Arranger may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on DebtDomain, IntraLinks, Syndtrak, ClearPar, or another similar electronic system (the "Platform") and (B) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Left Lead Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Left Lead Arranger shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

**6.03. Notices.** Promptly notify the Administrative Agent and each Lender in writing of:

(a) any Default or Event of Default;

(b) any Material Adverse Effect, including, to the extent that any of the following could reasonably be expected to result in a Material Adverse Effect: (i) any breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) any ERISA Event; and

(d) any material change in accounting policies or financial reporting practices by the Borrower.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04. Payment of Obligations.** Pay and discharge, and cause each Restricted Subsidiary to pay and discharge (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than a Lien that is not prohibited by Section 7.01 and could not reasonably be expected to have a Material Adverse Effect).

**6.05. Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its and its Restricted Subsidiaries' legal existence and good standing under the Laws of the jurisdiction of its organization except (i) in the case of a Restricted Subsidiary, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect or (ii) in a transaction permitted by Sections 7.04 or 7.05; (b) take all reasonable action to maintain all of its and its Restricted Subsidiaries' rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its and its Subsidiaries' registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06. Maintenance of Properties.** (a) Maintain, preserve and protect all of its and its Restricted Subsidiaries' material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted, and (b) make all necessary repairs thereto and renewals and replacements thereof, except in each of the foregoing clauses (a) and (b) where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07. Maintenance of Insurance.** Maintain insurance as is customary and usual for the business of the Borrower and each Restricted Subsidiary.

**6.08. Compliance with Laws.** Comply with the Laws (including any fictitious or trade name statute), regulations, and orders of any government body with authority over the Borrower's or any Restricted Subsidiary's business, except where the failure to comply could not reasonably be expected to have a Material Adverse Effect. The Lenders shall have no obligation to make any advance to the Borrower except in compliance with all applicable laws and regulations and the Borrower shall fully cooperate with the Lenders and the Administrative Agent in complying with all such applicable laws and regulations.

**6.09. Books and Records.** Maintain adequate books and records, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Borrower and its Restricted Subsidiaries, as the case may be.

**6.10. Inspection Rights.** Upon prior advance notice, allow the Administrative Agent, any Lender, and any of their respective agents to inspect the Borrower's properties and examine and audit its financial records at any reasonable time; provided, however, that (a) unless an Event of Default has occurred and is continuing, no more than two such inspections, examinations and audits may be made the Administrative Agent and the Lenders (acting collectively) per fiscal year of the Borrower, (b) when an Event of Default exists, the Administrative Agent, any Lender, or any of their respective agents may do any of the foregoing (as well as make copies of books and records) at the expense of the Borrower at any reasonable time, and (c) without limiting any of the foregoing, the Borrower shall have the right (if it so elects) to have a representative of the Borrower be present during any discussions with auditors and accountants. If the properties, books or records of the Borrower are in the possession of a third party, the Borrower authorizes that third party to permit the Administrative Agent or its agents to have access to perform inspections or audits and to respond to the Administrative Agent's requests for information concerning such properties, books and records.

**6.11. Use of Proceeds.** Use the proceeds of the Loans (a) for working capital, capital expenditures, acquisitions, dividends, distributions, stock buybacks, in each case to the extent not prohibited hereunder, (b) to refinance existing Indebtedness of the Borrower and its Subsidiaries, and (c) for other general corporate purposes not in contravention of any Law or of any Loan Document.

**6.12. ERISA Plans.** Promptly during each year, pay and cause its respective Subsidiaries to pay contributions adequate to meet at least the minimum funding standards under ERISA with respect to each and every Pension Plan; file each annual report required to be filed pursuant to ERISA in connection with each Plan for each year; and notify the Administrative Agent within ten (10) days of the occurrence of any Reportable Event that might constitute grounds for termination of any Pension Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer any Pension Plan.

**6.13. Designation of Unrestricted Subsidiaries.** The Borrower may, from time to time, designate one or more Subsidiaries as "Unrestricted Subsidiaries" by giving written notice to the Administrative Agent; provided, however, that in no event may the Borrower designate any Subsidiary as an Unrestricted Subsidiary if, at the time of and immediately after giving effect to such designation, either (a) the Attributable Asset Share of the Borrower in all Unrestricted Subsidiaries exceeds 10% of the consolidated total assets of the Borrower and its Subsidiaries (based on the most recent consolidated balance sheet of the Borrower and its Subsidiaries delivered to the Administrative Agent and the Lenders under Section 6.01(a) or (b)), or (b) the Attributable A/R Share of the Borrower in all Unrestricted Subsidiaries exceeds 10% of the net accounts receivable of the Borrower and its Subsidiaries (based on the most recent consolidated balance sheet of the Borrower and its Subsidiaries delivered to the Administrative Agent and the Lenders under Section

6.01(a) or (b)). As of the Closing Date, the Unrestricted Subsidiaries are set forth on Schedule 6.13. Any Subsidiary which has been designated as an Unrestricted Subsidiary pursuant to this Section 6.13 may, at any time thereafter, be redesignated as a Restricted Subsidiary by the Borrower; provided, however, that a Subsidiary that has been redesignated as a Restricted Subsidiary as provided in this sentence may not thereafter be designated or redesignated as an Unrestricted Subsidiary.

**6.14. Maintenance of REIT Status.** In the case of the Borrower, at all times conduct its affairs and the affairs of its Subsidiaries in a manner so as to continue to qualify as a REIT for U.S. federal income tax purposes.

**6.15. Anti-Corruption Laws and Sanctions Laws.** Conduct its businesses in material compliance with applicable Anti-Corruption Laws, and maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and applicable Sanctions by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents.

## ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall remain unpaid or unsatisfied:

**7.01. Liens.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.01;

(c) Liens for taxes and assessments not yet delinquent or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) statutory Liens of landlords and Liens of carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) 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;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) normal and customary banker's Liens and rights of setoff arising in the ordinary course of business with respect to cash and cash equivalents; provided that such cash and cash equivalents are not dedicated cash collateral in favor of such depository institution and are not otherwise intended to provide collateral security (other than for customary account commissions, fees and reimbursable expenses relating solely to deposit accounts, and for returned items);

(h) normal and customary rights of setoff and similar Liens arising under bona fide interest rate or currency hedging agreements, which are not for speculative purposes;

(i) to the extent constituting a Lien, the interests of landlords and lessors under Operating Leases permitted hereunder, and any precautionary Uniform Commercial Code financing statements filed in connection therewith;

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

(k) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(l) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(j);

(m) Liens securing Indebtedness in respect of Finance Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets (including the costs of construction, improvement or rehabilitation of such fixed or capital assets); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition, or the cost of construction, improvement or rehabilitation of such fixed or capital assets, as applicable;

(n) leases, subleases, licenses and sublicenses which do not materially interfere with the business of the Borrower or any Subsidiary;

(o) Liens existing on property or assets of any Person at the time such Person becomes a Subsidiary or such property or assets are acquired, but only, in any such case, (i) if such Lien was not created in contemplation of such Person becoming a Subsidiary or such property or assets being acquired, and (ii) so long as such Lien does not encumber any assets other than the property subject to such Lien at the time such Person becomes a Subsidiary or such property or assets are acquired;

(p) any renewals, replacements or extensions of the Liens described in clauses (b), (m) or (o) above, provided that (i) the property covered thereby is not expanded, and (ii) the amount secured or benefited thereby is not increased;

(q) Liens on JV Interests held by the Borrower or a Subsidiary in JV Entities securing the obligations of the Borrower or Subsidiary to honor put rights and put options in favor of joint venture partners with respect to the JV Interests held by joint venture partners in such JV Entities, provided that such Liens shall attach only to the JV Interests held by the Borrower or a Domestic Subsidiary and not to any other assets of the Borrower or Subsidiary;

(r) Liens arising in connection with Sale-Leaseback Transactions permitted under Section 7.05(k);

(s) Liens in the form of cash collateral securing reimbursement obligations under bank guarantees, letters of credit and other documentary credits not issued hereunder but permitted by Section 7.03, not to exceed \$50,000,000 in the aggregate;

(t) Liens arising from sales or discounts of accounts receivable to the extent permitted under Section 7.05(f);

(u) Liens granted by any Subsidiary of the Borrower in favor of any Restricted Subsidiary or the Borrower;

(v) Liens resulting from escrow or deposits of cash required to satisfy “funds certain” or good faith deposit requirements in connection with Permitted Acquisitions; provided that (i) the aggregate amount of such escrows and deposits shall not at any time exceed the cash consideration to be paid by the Borrower and its Restricted Subsidiaries for the applicable Permitted Acquisition, and any such escrows and deposits in excess of an aggregate amount of \$2,000,000,000 shall consist solely of proceeds of term loans, bridge loans, or debt or equity securities borrowed or issued by the Borrower or a Restricted Subsidiary (and permitted hereunder) to fund such Permitted Acquisition and (ii) the applicable Liens shall terminate upon the earliest of (x) the consummation of the applicable Permitted Acquisition (and such dollar limitation shall be reduced by the applicable amount) and (y) the date of the termination or abandonment of such Permitted Acquisition; and

(w) Liens not otherwise permitted by this Section 7.01, if at the time of, and after giving effect to, the creation or assumption of any such Lien the sum, without duplication, of (i) the aggregate amount of all Indebtedness of the Borrower and its Restricted Subsidiaries that is secured by any Liens not otherwise permitted under clauses (a) through (v) of this Section 7.01 plus (ii) the aggregate amount of Indebtedness of Restricted Subsidiaries permitted under subsection (n) of Section 7.03, shall not exceed the greater of \$1,500,000,000 and 10% of Adjusted Consolidated Total Assets as of the end of the most recently ended fiscal quarter prior to the attachment of such Liens.

**7.02. Investments.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, make any Investments that are Acquisitions, other than Permitted Acquisitions; or make any other material Investments outside of the ordinary course of business, except to the extent that no Default shall have occurred and be continuing at the time of such Investment or would result therefrom.

**7.03. Indebtedness.** The Borrower shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or otherwise be directly or indirectly liable for any Indebtedness, except:

(a) Indebtedness arising under the Loan Documents;

(b) Indebtedness outstanding on the Closing Date and set forth on Schedule 7.03 hereto, reduced by the amount of any scheduled amortization payments, mandatory prepayments when actually paid, conversions or permanent reductions thereof;

(c) Attributable Indebtedness in respect of Finance Leases and Synthetic Lease Obligations, and purchase money obligations for fixed or capital assets, so long as no Default has occurred and is continuing or would result from the creation, incurrence or assumption thereof;

(d) Swap Obligations; provided that such Swap Obligations are entered into to protect the Borrower or any of its Restricted Subsidiaries from fluctuations in interest rates, currency exchange rates or commodity prices (and not for speculative purposes);

(e) intercompany Indebtedness constituting Investments permitted by Section 7.02;

(f) 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 (5) Business Days of incurrence;

(g) Indebtedness 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;

(h) (i) any Indebtedness incurred by the Borrower or any Restricted Subsidiary (such Indebtedness, "Refinancing Indebtedness") that refinances Indebtedness incurred by the Borrower or such Restricted Subsidiary, or that the Borrower or such Restricted Subsidiary is otherwise permitted to maintain, under Section 7.03(b) or Section 7.03(1); provided, that (w) the weighted average life to maturity of such Refinancing Indebtedness is not less than the weighted average life to maturity of the existing Indebtedness being refinanced, (x) the aggregate principal amount of such Refinancing Indebtedness does not exceed the aggregate principal amount of such existing Indebtedness being refinanced (plus accrued interest, any premium, and reasonable fees and expenses incurred by the Borrower or such Restricted Subsidiary in connection with such refinancing), (y) to the extent such existing Indebtedness being refinanced is secured, such Refinancing Indebtedness is secured by no more collateral, and with no more senior lien priority, than such existing Indebtedness being refinanced and (z) the guarantors and obligors in respect of such Refinancing Indebtedness are the same as, or a subset of, the guarantors and obligors in respect of such Indebtedness being refinanced and (ii) any Guarantee of the Refinancing Indebtedness described in the foregoing clause (i), but only to the extent such Guarantee exists with respect to

the Indebtedness being refinanced at the time such refinancing occurs and is not created in contemplation of such refinancing;

(i) Indebtedness consisting of “earn-out” obligations, guarantees, indemnities or obligations in respect of purchase price adjustments in connection with the acquisition or disposition of assets;

(j) Indebtedness 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 sixty (60) days following the incurrence thereof;

(k) Indebtedness arising in connection with Sale-Leaseback Transactions, provided that the Lien securing such Indebtedness is permitted under Section 7.01;

(l) Acquired Indebtedness;

(m) Indebtedness represented by Guarantees of Indebtedness of a Restricted Subsidiary that such Restricted Subsidiary is permitted to incur, or that is otherwise permitted to be maintained by such Restricted Subsidiary, under clauses (c) through (g), (i), (j), (k) or (n) of this Section 7.03; and

(n) other Indebtedness so long as no Default has occurred and is continuing or would result from the creation, incurrence or assumption thereof; provided that the sum, without duplication, of (i) Indebtedness of the Borrower that is secured by Liens permitted under clause (w) of Section 7.01 and (ii) Indebtedness of Restricted Subsidiaries that is not otherwise permitted by this Section 7.03 shall not exceed the greater of \$1,500,000,000 and 10% of Adjusted Consolidated Total Assets as of the end of the most recently ended fiscal quarter prior to the incurrence of such Indebtedness.

#### **7.04. Fundamental Changes.**

(a) The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any consolidation, merger, or other combination, except so long as no Event of Default has occurred and is continuing or would result therefrom:

(i) the Borrower may consolidate, merge or combine with any Subsidiary if the Borrower is the surviving entity,

(ii) any Subsidiary may consolidate, merge or combine with any other Subsidiary, and

(iii) the Borrower or any Subsidiary may consolidate, merge or combine with any Person in connection with a Permitted Acquisition or a transaction permitted by Section



7.05, so long as, if the Borrower is a party to such Permitted Acquisition or transaction permitted by Section 7.05, the Borrower shall be the surviving entity; or

(b) liquidate or dissolve any Domestic Subsidiary's business except as may be permitted by Section 7.05(a).

**7.05. Maintenance of Assets; Dispositions.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, sell, assign, lease, transfer or otherwise Dispose of (collectively, "Transfer") any part of the business or assets of the Borrower or any Restricted Subsidiary, except:

(a) Transfers (including any disposition that is in the nature of a liquidation or dissolution) (i) by any Subsidiary to the Borrower or any other Subsidiary or (ii) so long as no Default would result from such Transfer, by the Borrower to any Restricted Subsidiary which do not constitute a Change of Control;

(b) leases or subleases of, or occupancy agreements with respect to, real property (including IBX centers);

(c) non-exclusive licenses of intellectual property and similar arrangements for the use of the property of the Borrower or its Restricted Subsidiaries in the ordinary course of business;

(d) sales of inventory to customers in the ordinary course of business;

(e) Transfers of cash, cash equivalents and marketable securities in the ordinary course of business, including, without limitation, to a Subsidiary;

(f) sales or discounts of accounts receivable without recourse in the ordinary course of business (and excluding accounts receivable which have been fully reserved or written off) in connection with accounts receivable that are more than ninety (90) days past due;

(g) Transfers of worn-out, obsolete or surplus equipment no longer used in the ordinary course of business;

(h) the abandonment or other disposition of intellectual property that is no longer economically practicable to maintain or useful in the conduct of business;

(i) Transfers of assets subject to a casualty or event of loss covered by insurance following the receipt of insurance proceeds with respect to such casualty or event of loss;

(j) Transfers constituting Liens permitted under Section 7.01 and Investments or Restricted Payments that are not prohibited by this Agreement;

(k) Sale-Leaseback Transactions to the extent not otherwise prohibited hereunder;

(l) Transfers of assets required by Governmental Authorities as a condition to their approval of the consummation of Permitted Acquisitions; and

(m) other Transfers not otherwise permitted by this Section 7.05, so long as (i) no Default or Event of Default has occurred and is continuing or would result therefrom and (ii) the aggregate book value of assets so Transferred in any fiscal year of the Borrower under this clause (m) does not exceed 15% of Adjusted Consolidated Total Assets.

**7.06. Restricted Payments.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, declare or make, directly or indirectly, any Restricted Payment, except:

(a) any Subsidiary may pay dividends or distributions on its Equity Interests to the Borrower or to any intervening Subsidiary of the Borrower;

(b) dividends or distributions payable solely in Equity Interests (other than Equity Interests that are mandatorily redeemable or redeemable at the option of the holder thereof on any date that is earlier than 91 days after the Maturity Date in effect at the time of the declaration or making of such dividend or distribution);

(c) cash payments (i) for repurchases by the Borrower of common stock of the Borrower from officers, directors and employees of the Borrower 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 Borrower, and (ii) in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, in an aggregate amount, for the foregoing sub-clauses (c)(i) and (c)(ii), not to exceed \$5,000,000;

(d) noncash repurchases of Equity Interests deemed to occur upon the exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price and related statutory withholding taxes of such options or warrants;

(e) the Borrower may (i) issue and deliver Permitted Junior Securities (as defined in the indentures for the Convertible Subordinated Notes (the "Convertible Subordinated Notes Indentures")) upon conversion of the Convertible Subordinated Notes in accordance with the terms of the Convertible Subordinated Notes Indentures and (ii) unless (x) an Event of Default described in Section 8.01(a) has occurred and is continuing or (y) a Payment Blockage Period (as defined in the Convertible Subordinated Notes Indentures) is in effect, make (A) regularly scheduled payments of cash interest and, to the extent not prohibited hereunder, mandatory principal payments on the Convertible Subordinated Notes, in each case, in accordance with the terms thereof, and (B) cash Restricted Payments in satisfaction of fractional shares in connection with a conversion of the Convertible Subordinated Notes into Permitted Junior Securities in accordance with the terms of Convertible Subordinated Notes Indentures;

(f) so long as (i)(A) the Borrower believes in good faith that it qualifies as a REIT, (B) the Borrower has not publicly disclosed an intention to no longer be treated as a REIT, and (C) no resolution shall have been adopted by the Borrower's board of directors abandoning or otherwise contradicting its intent to elect to be treated as a REIT, or (ii) the Borrower is a REIT, the Borrower may make cash dividends and distributions to its shareholders notwithstanding that any Default

may have occurred and be continuing (x) provided such cash dividends and distributions do not exceed in the aggregate for any period of four consecutive fiscal quarters of the Borrower up to 100% of Funds From Operations for such period or (y) in such greater amount as may be required for the Borrower to continue to be qualified as a REIT or to avoid the imposition of income or excise taxes on the Borrower; and

(g) to the extent that no Default shall have occurred and be continuing at the time of such action or would result therefrom, Restricted Payments not otherwise permitted by clauses (a) through (f).

**7.07. Change in Nature of Business.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, engage in any business activities substantially different from the present business of the Borrower and its Subsidiaries on the date hereof or reasonably related thereto.

**7.08. Transactions with Affiliates.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than (a) on fair and reasonable terms substantially as favorable to the Borrower or such Restricted Subsidiary, as the case may be, as would be obtainable by the Borrower or such Restricted Subsidiary, as the case may be, at the time in a comparable arm's length transaction with a Person other than an Affiliate, (b) transactions expressly permitted by Section 7.04(a), Section 7.05(a), or, in the case of transactions with Subsidiaries only, Section 7.05(e), (c) transactions between the Borrower and its wholly-owned Subsidiaries, (d) transactions among the Borrower's wholly-owned Subsidiaries, or (e) other individual transactions that do not involve amounts in excess of \$50,000,000 per transaction or series of related transactions.

**7.09. Burdensome Agreements.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Material Domestic Subsidiary to make Restricted Payments to the Borrower or to otherwise transfer property to the Borrower, (ii) of any Material Domestic Subsidiary to Guarantee the Indebtedness of the Borrower or (iii) of the Borrower or any Material Domestic Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that (A) none of the foregoing shall apply to restrictions and conditions imposed by applicable Laws (which (taken as a whole) could not reasonably be expected to have a Material Adverse Effect), (B) none of the foregoing shall apply to customary restrictions and conditions contained in agreements relating to the sale of the assets or Equity Interests permitted under Section 7.05 pending such sale, provided such restrictions and conditions apply only to the Person whose assets or Equity Interests are to be sold, (C) clauses (i) and (iii) shall not apply to restrictions or conditions imposed on specific assets which are the subject of any leases (including Finance Leases and Operating Leases) or to customary provisions in leases (including Finance Leases and Operating Leases) and other contracts restricting the assignment of such leases and other contracts, (D) clauses (ii) and (iii) shall not apply to the restrictions contained in the BofA Credit Agreement or the Senior Notes Indentures (in each case, as such restrictions are in effect on the Closing Date), (E) clauses (ii) and (iii) shall not apply to customary restrictions

contained in the documentation relating to financings permitted hereunder, provided that such restrictions shall not restrict (x) the Borrower's or any Material Domestic Subsidiary's ability to grant Liens in favor of the Administrative Agent (or the Administrative Agent ability to enforce such Liens) under or in connection with the Loan Documents or (y) any Material Domestic Subsidiary's ability to guarantee the Obligations and (F) clause (i) shall not apply to restrictions imposed on any Foreign Subsidiary pursuant to the terms of any agreement governing Indebtedness of such Foreign Subsidiary permitted under Section 7.03; provided that any such restrictions shall not limit the ability of any such Persons, so long as no default or event of default has occurred under such financing, to make Restricted Payments in an amount equal to at least 50% of consolidated net income to the Borrower or to such person's Parent, a wholly owned Subsidiary of the Borrower; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure the Obligations, other than the requirements contained in the Senior Notes Indentures (as such requirements are in effect on the Closing Date).

**7.10. Use of Proceeds.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11. Financial Covenants.** The Borrower shall not:

(a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of any fiscal quarter of the Borrower to be less than 1.50 to 1.00.

(b) Consolidated Net Lease Adjusted Leverage Ratio. Permit the Consolidated Net Lease Adjusted Leverage Ratio as of the end of any fiscal quarter of the Borrower to exceed 6.00 to 1.00.

(c) Consolidated Lease Adjusted Secured Leverage Ratio. Permit the Consolidated Lease Adjusted Secured Leverage Ratio as of the end of any fiscal quarter of the Borrower to exceed 2.25 to 1.00.

**7.12. Prepayments of Certain Indebtedness.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any portion of, except to the extent provided in Section 7.06(e), any Convertible Subordinated Notes or other Indebtedness that is subordinated to the Obligations, unless no Default or Event of Default has occurred and is continuing or would result therefrom.

**7.13. Sanctions.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person that, at the time of the use of such proceeds, is the subject of Sanctions or is located, organized or resident in any Designated Jurisdiction, or in

any other manner that could reasonably be expected to result in a violation of Sanctions by any party to this Agreement or any other Loan Document.

**7.14. Anti-Corruption Laws.** The Borrower shall not, nor shall it permit any Restricted Subsidiary to, directly or indirectly, directly or indirectly use the proceeds of any Loan for any purpose that would materially breach any Anti-Corruption Laws or cause any party to this Agreement or any other Loan Document to be in violation of any applicable Anti-Corruption Laws.

**ARTICLE VIII.  
EVENTS OF DEFAULT AND REMEDIES**

**8.01. Events of Default.** Any of the following shall constitute an Event of Default (each, an “Event of Default”):

(a) Non-Payment. The Borrower fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan, or any interest on any Loan, or (ii) within three (3) Business Days after the same becomes due, any fee due hereunder or any other amount payable hereunder or under any other Loan Document; or

(b) Covenants. The Borrower breaches, or fails to perform or observe, any term, covenant or agreement contained in any of Sections 6.01, 6.02, 6.03, 6.05 (as to existence only), 6.10, 6.11, 6.13, 6.14 or 6.15 or Article VII; or

(c) Other Breaches. The Borrower fails to perform or observe any covenant or agreement (not specified in subsections (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of (i) a Responsible Officer of the Borrower obtaining knowledge of such failure and (ii) the Administrative Agent or a Lender notifying the Borrower in writing of such failure; or

(d) Default under Other Loan Documents. Any default or event of default occurs under any other Loan Document or other document required by or delivered in connection with this Agreement (after giving effect to any applicable grace periods) or any such document is no longer in effect; or

(e) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(f) Cross-Default. (i) Any default occurs under any agreement of the Borrower or its Subsidiaries (other than any agreement entered into by any Unrestricted Subsidiary with respect to Indebtedness of such Unrestricted Subsidiary for which there is no recourse to the Borrower or any Restricted Subsidiary) that permits the counterparty to such agreement to declare to be due and payable prior to the stated maturity thereof an obligation of the Borrower or any of its Subsidiaries of \$200,000,000 or more, individually or in the aggregate for any or all such entities; or (ii) the Borrower or any Subsidiary thereof (x) fails to observe or perform any other agreement or condition

relating to any such obligation or contained in any instrument or agreement evidencing, securing or relating thereto, or (y) any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such obligation or the beneficiary or beneficiaries of such obligation (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such obligation to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such obligation to be made, prior to its stated maturity, or such obligation to become payable or cash collateral in respect thereof to be demanded, unless, in the case of clause (f)(ii)(y), the Borrower would not be prohibited from prepaying such Indebtedness under Section 7.12, disregarding for this purpose any Default that would otherwise arise under this Section 8.01(f)(ii)(y); or (iii) there occurs under any Swap Contract (other than a Swap Contract entered into by an Unrestricted Subsidiary for which there is no recourse to the Borrower or any Restricted Subsidiary) an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is \$200,000,000 or more; or

(g) Insolvency Proceedings. The Borrower or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(h) Receivers. A receiver or similar official is appointed for a substantial portion of the Borrower's or any Material Subsidiary's business, or the business is terminated; or

(i) Inability to Pay Debts; Attachment. (i) The Borrower or any Material Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within forty-five (45) days after its issue or levy; or

(j) Judgments. (i) Any judgments or arbitration awards are entered against the Borrower or any Subsidiary thereof (other than, solely with respect to judgments or awards as to which there is no claim or recourse against the Borrower or any Restricted Subsidiary, any Unrestricted Subsidiary) in an aggregate amount of \$200,000,000 or more, and there is a period of 45 consecutive days during which either such judgments or arbitration awards remain unpaid or unsatisfied or a stay of enforcement of such judgments, by reason of a pending appeal, is not in effect; or (ii) any one or more non-monetary final judgments are entered against the Borrower or any Subsidiary thereof that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and there is a period of forty-five (45) consecutive days during which a

stay of enforcement of such non-monetary final judgment(s), by reason of a pending appeal, is not in effect; or

(k) ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount of \$200,000,000 or more, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount of \$200,000,000 or more; or

(l) Invalidity of Loan Documents. The Borrower asserts in writing that this Agreement or any other Loan Documents, or part thereof, is invalid, or a court of competent jurisdiction invalidates any part of this Agreement or any other Loan Document; or

(m) Change of Control. A Change of Control occurs.

**8.02. Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligations shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(iii) exercise on behalf of itself, the Lenders all rights and remedies available to it, the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

**8.03. Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.12, be applied by the Administrative Agent in the following order:

1 , to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative

Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

2 , to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

3 , to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

4 , to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

**ARTICLE IX.**  
**ADMINISTRATIVE AGENT**

**9.01. Appointment and Authority.** Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall have no rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.02. Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.



**9.03. Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Appropriate Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Appropriate Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04. Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or

intranet website posting or other distribution), including, without limitation, any representation or warranty contained therein, believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05. Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06. Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty

(30) days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

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

**9.08. No Other Rights or Duties, Etc.** Anything herein to the contrary notwithstanding, no Joint Lead Arranger or any bookrunner, syndication agent or documentation agents listed on the cover page hereof shall have any rights, privileges, powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except (a) in the case of any such Person, in its capacity, as applicable, as the Administrative Agent or a Lender hereunder, (b) in the case of the

Left Lead Arranger, as set forth in the Fee Letter, and (c) in the case of the Joint Lead Arrangers, as set forth in the Engagement Letter.

**9.09. Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.07 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.07 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.10. Lender ERISA Non-Fiduciary Representations and Covenants.**

(a) Each Lender (i) represents and warrants, as of the date such Person became a Lender party hereto, to, and (ii) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Left Lead Arranger, each other Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) clause (a)(i) above is true with respect to a Lender or (2) such Lender has provided another representation, warranty and covenant as provided in clause (a)(iv) above, such Lender further (i) represents and warrants, as of the date such Person became a Lender party hereto, to, and (ii) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Left Lead Arranger, each other Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent, the Left Lead Arranger, each other Joint Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

## ARTICLE X. MISCELLANEOUS

**10.01. Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective

only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to clause (ii) of the immediately succeeding sentence) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided, however, that (i) only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate and (ii) only the consent of the Required Lenders shall be necessary to amend any financial covenant hereunder (or any defined term used therein);

(e) change (i) Sections 2.11 or 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.03 or 2.04(b), respectively, in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (x) if such Facility is the Dollar Term Facility, the Required Dollar Lenders, (y) if such Facility is the Euro Term Facility, the Required Euro Lenders and (z) if such Facility is the DDTL Facility, the Required DDTL Lenders; or

(f) (i) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(f)), without the written consent of each Lender or (ii) the definition of "Required Dollar Lenders", "Required Euro Lenders" or "Required DDTL Lenders" without the written consent of each Lender under the applicable Facilities or Facility.

Notwithstanding anything to the contrary in this Section 10.01 or in any other provision of this Agreement or any other Loan Document:

(i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document;

(ii) the Fee Letter and the Engagement Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the respective parties thereto;

(iii) the Administrative Agent and the Borrower may amend any Loan Document to (1) cure any ambiguity, omission, mistake, defect or inconsistency, in each case, of a technical nature or (2) make any change that would add or make more restrictive any covenant of the Borrower or provide an additional right or benefit to the Lenders, so long as, in each case, (x) such changes shall not be adverse to the Lenders, (y) the Lenders shall have received at least five (5) Business Days' prior written notice thereof and (z) the Administrative Agent shall not have received, within five (5) Business Days following the date of such notice to the Lenders, written notice from the Required Lenders stating that the Required Lenders object to such amendment;

(iv) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender; and

(v) the Administrative Agent and the Borrower may amend this Agreement in accordance with Section 3.03(c).

#### **10.02. Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail as follows:

(i) if to the Borrower or the Administrative Agent, to the address or electronic mail address specified for such Person on Schedule 10.02; and

(ii) if to any Lender, to the address or electronic mail address specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials or notices through the platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. The Borrower and the Administrative Agent may change its respective address or electronic mail address for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address or electronic mail address for notices and other communications hereunder by notice to the Borrower and the Administrative



Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including and Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic communications with the Administrative Agent may be recorded by the Administrative Agent and each of the parties hereto hereby consents to such recording.

**10.03. No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.11), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent

pursuant to Section 8.02 and (ii) in addition to the matters set forth in clause (c) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **10.04. Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrower shall jointly and severally indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, penalties and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower against such Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any of its Related Parties, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided further that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or against its Related Parties acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and each hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05. Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion)

to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **10.06. Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment under any Facility and the Loans at the time owing to it); provided that, in each case with respect to any Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the DDTL Commitments of the assigning Lender under the DDTL Facility or the principal outstanding balance of the Loans of the assigning Lender under any Facility subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and

Assumption, as of the Trade Date, shall not be less than \$10,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that, the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to

the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this subsection, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain and update at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (collectively, the "Register"). The entries in the Register shall be conclusive in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a

Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than (w) a natural person, (x) a Defaulting Lender, or (y) the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under subsection (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use commercially reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 10.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant to which that Lender has sold a participation and the principal amounts (and stated interest) of each such Participant's interest in the Commitments, Loans or other obligations under this Agreement (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that

such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, the Bank of Japan or other central banking authority; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**10.07. Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) with the consent of the Borrower, (h) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) to any credit insurance provider relating to the Borrower or its Subsidiaries and their respective obligations, or (iii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent or any Lender in connection with the administration and management of this Agreement and the other Loan Documents. For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis



prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08. Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.12 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09. Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments

and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10. Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means, or using an electronic platform approved by the Administrative Agent, shall be effective as provided in Section 10.17.

**10.11. Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**10.12. Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13. Replacement of Lenders.** If (i) any Lender requests compensation under Section 3.04, (ii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (iii) any Lender is a Defaulting Lender, or (iv) any Lender has refused or failed, within a reasonable period of time (as determined by Administrative Agent in its reasonable discretion) from first receiving a written request therefor from Administrative Agent, to provide its written approval of any amendment, consent or waiver in respect of any matter related to this Agreement or the other Loan Documents requiring that all Lenders or all affected Lenders will have given written approval of such requested

amendment, consent or waiver pursuant to Section 10.01 and in such instance Lenders sufficient to constitute Required Lenders have already provided such written approval pursuant to Section 10.01, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender refusing or failing to provide its written approval referenced in clause (iv) above, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **10.14. Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN, EXCLUSIVELY, THE COURTS OF THE STATE OF NEW YORK

SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15. Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10.16. No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Joint Lead Arrangers and the Lenders are arm's-length commercial transactions between the Borrower, on the one hand, and the Administrative Agent, the Joint Lead Arrangers and the Lenders, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent, each Joint Lead Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (ii) neither the Administrative Agent nor any Lender or Joint Lead Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Joint Lead Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Lender or Joint Lead Arranger has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. The Borrower agrees that it will not claim that any of the Administrative Agent, Joint Lead Arrangers, or Lenders has rendered advisory services of any nature or respect or owes a fiduciary or similar duty to the Borrower in connection with the transactions contemplated hereby or the process leading thereto.

**10.17. Electronic Execution of Assignments and Certain Other Documents.**

(a) The words "execute," "execution," "signed," "signature," and words of like import in or related to this Agreement and any other document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

(b) Without limitation of the foregoing, this Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication"), including Communications required to be in

writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The Borrower agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on the Borrower to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the Borrower enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the Borrower without further verification and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

**10.18. USA PATRIOT Act .** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**10.19. Designation as Senior Debt.** All Obligations shall be “Designated Senior Indebtedness” for purposes of, and as defined in any subordinated indentures or similar instruments issued by the Borrower after the Closing Date.

**10.20. Judgment Currency.** If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “Judgment Currency”) other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the “Agreement Currency”), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

**10.21. Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Solely to the extent any Lender that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**10.22. ERISA Non-Fiduciary Provisions.**

(a) The Administrative Agent, the Left Lead Arranger, each other Joint Lead Arranger and each Lender hereby informs the Borrower that such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person or an Affiliate has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans or the Commitments, (ii) may recognize a gain if it purchased the Loans or the Commitments for an amount less than the par amount thereof or sells the Loans or the Commitments for an amount in excess of what it paid therefor or extended to the Borrower hereunder and/or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

(b) The Administrative Agent, the Left Lead Arranger and each other Joint Lead Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

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*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWER:**

**EQUINIX, INC.**

By: /s/ Keith D. Taylor\_\_

Name: Keith D. Taylor\_\_

Title: Chief Financial Officer\_\_

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**MUFG BANK, LTD.,**  
as Administrative Agent

By: /s/ Lawrence Blat\_\_

Name: Lawrence Blat\_\_

Title: Authorized Signatory\_\_

**MUFG UNION BANK, N.A.,**  
as a Lender

By: /s/ Matthew Antioco\_\_

Name: Matthew Antioco\_\_

Title: Director\_\_

**SUMITOMO MITSUI BANKING CORPORATION.,**  
as a Lender

By: /s/ Michael Maguire\_\_

Name: Michael Maguire\_\_

Title: Managing Director\_\_

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**TD BANK, N.A.,**  
as a Lender

By: /s/ Matt Waszmer\_\_

Name: Matt Waszmer\_\_

Title: Senior Vice President\_\_

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**MIZUHO BANK, LTD.,**  
as a Lender

By: /s/ Tracy Rahn\_\_

Name: Tracy Rahn\_\_

Title: Executive Director\_\_

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**BANK OF AMERICA, N.A.,**  
as a Lender

By: /s/ David Barney\_\_

Name: David Barney\_\_

Title: Senior Vice President\_\_

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**ING BANK N.V.,**  
as a Lender

By: /s/ Diederik Slugs\_\_

Name: Diederik Slugs\_\_

Title: Director\_\_

By: /s/ Blaise van der Zwaal\_\_

Name: Blaise van der Zwaal\_\_

Title: Director\_\_

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**THE BANK OF NOVA SCOTIA,**  
as a Lender

By: /s/ Jason Rinne\_\_

Name: Jason Rinne\_\_

Title: Director\_\_

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**GOLDMAN SACHS BANK USA,**  
as a Lender

By: /s/ Rebecca Kratz\_\_

Name: Rebecca Kratz\_\_

Title: Authorized Signatory\_\_

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**HSBC BANK USA, NATIONAL ASSOCIATION**  
as a Lender

By: /s/ Rumesha Ahmed\_\_

Name: Rumesha Ahmed\_\_

Title: Vice President\_\_

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**HSBC BANK PLC,**  
as a Lender

By: /s/ Prem Jacob\_\_

Name: Prem Jacob\_\_

Title: Managing Director, Head of Multinationals, UK\_\_

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**JPMORGAN CHASE BANK, N.A.,**  
as a Lender

By: /s/ Bruce S. Borden\_\_

Name: Bruce S. Borden\_\_

Title: Executive Director\_\_

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**ROYAL BANK OF CANADA,**  
as a Lender

By: /s/ Scott Johnson\_\_

Name: Scott Johnson\_\_

Title: Authorized Signatory\_\_

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**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Lukas M. Colemann\_\_

Name: Lukas M. Coleman\_\_

Title: Vice President, Portfolio Manager\_\_

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**BNP PARIBAS,**  
as a Lender

By: /s/ Maria Mulic\_\_

Name: Maria Mulic\_\_

Title: Managing Director\_\_

By: /s/ Barbara Nash\_\_

Name: Barbara Nash\_\_

Title: Managing Director\_\_

**CITIBANK, N.A.,**  
as a Lender

By: /s/ Robert Parr\_\_

Name: Robert Parr\_\_

Title: Vice President and Managing Director\_\_

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**MORGAN STANLEY BANK, N.A.,**  
as a Lender

By: /s/ Julie Lilienfeld\_\_

Name: Julie Lilienfeld\_\_

Title: Authorized Signatory\_\_

[SIGNATURE PAGE TO CREDIT AGREEMENT]

## Subsidiaries of Equinix, Inc.

<b>Entity</b>	<b>Jurisdiction</b>
Equinix (Australia) Enterprises Holdings Pty Limited	Australia
Equinix (Australia) Enterprises Pty Limited	Australia
Equinix Australia Pty Limited	Australia
McLaren Pty Limited	Australia
Metronode (ACT) Pty Limited	Australia
Metronode (NSW) Pty Ltd	Australia
Metronode C1 Pty Limited	Australia
Metronode Group Pty Limited	Australia
Metronode Investments Pty Limited	Australia
Metronode M2 Pty Ltd	Australia
Metronode P2 Pty Limited	Australia
MGH Pegasus Pty Ltd	Australia
Equinix Australia National Pty. Ltd.	Australia
Metronode S2 Pty Ltd	Australia
Metronode New Zealand Limited	New Zealand
Equinix South America Holdings, LLC	Delaware, U.S.
MGH Bidco Pty Limited	Australia
MGH Finco Pty Limited	Australia
MGH Holdco Pty Ltd	Australia
McLaren Unit Trust	Australia
Equinix do Brasil Soluções de Tecnologia em Informática Ltda.	Brazil
Equinix do Brasil Telecomunicações Ltda.	Brazil
Equinix Colombia, Inc.	British Virgin Islands
Equinix (Bulgaria) Data Centers EOOD	Bulgaria
Equinix (Canada) Enterprises Ltd.	Canada
Equinix Canada (TR3) Ltd.	Canada
Equinix Canada Ltd.	Canada
CHI 3, LLC	Delaware, U.S.
DCI Management, Inc.	Delaware, U.S.
DCI Tech Holdings Infomart, LLLP	Delaware, U.S.
Equinix (EMEA) Management, Inc.	Delaware, U.S.
Equinix (Government) LLC	Delaware, U.S.
Equinix (US) Enterprises, Inc.	Delaware, U.S.
Equinix (Velocity) Holding Company	Delaware, U.S.
Equinix Impact LLC	Delaware, U.S.
Equinix LLC	Delaware, U.S.
Equinix Pacific LLC	Delaware, U.S.
Equinix Professional Services, Inc.	Delaware, U.S.
Equinix Government Solutions LLC	Delaware, U.S.
Equinix RP II LLC	Delaware, U.S.
Infomart Dallas GP, LLC	Delaware, U.S.

<b>Entity</b>	<b>Jurisdiction</b>
Infomart Dallas, LP	Delaware, U.S.
Infomart Holdings, LLC	Delaware, U.S.
Infomart Venture, LLC	Delaware, U.S.
LA4, LLC	Delaware, U.S.
Moran Road Partners, LLC	Delaware, U.S.
NY2 Hartz Way, LLC	Delaware, U.S.
SV1, LLC	Delaware, U.S.
Switch & Data Facilities Company LLC	Delaware, U.S.
Switch & Data LLC	Delaware, U.S.
Switch & Data MA One LLC	Delaware, U.S.
Switch & Data WA One LLC	Delaware, U.S.
Switch & Data/NY Facilities Company LLC	Delaware, U.S.
Switch and Data CA Nine LLC	Delaware, U.S.
Switch And Data NJ Two LLC	Delaware, U.S.
Switch and Data Operating Company LLC	Delaware, U.S.
Switch and Data VA Four LLC	Delaware, U.S.
CHI 3 Procurement, LLC	Illinois, U.S.
VDC I, LLC	Delaware, U.S.
VDC II, LLC	Delaware, U.S.
VDC III, LLC	Delaware, U.S.
VDC IV, LLC	Delaware, U.S.
VDC V, LLC	Delaware, U.S.
VDC VI, LLC	Delaware, U.S.
VDC VII, LLC	Delaware, U.S.
VDC VIII, LLC	Delaware, U.S.
Equinix Hyperscale (LP) LLC	Delaware, U.S.
Equinix Hyperscale (GP) LLC	Delaware, U.S.
Packet Host, Inc.	Delaware, U.S.
PacketHost, Inc.,	Philippines
Packet Host, Ltd.	Japan
Packet Host Pte. Ltd.	Singapore
Equinix (Finland) Enterprises Oy	Finland
Equinix (Finland) Oy	Finland
Equinix (France) Enterprises SAS	France
Equinix (Real Estate) Holdings SC	France
Equinix (Real Estate) SCI	France
Equinix France SAS	France
Equinix (Germany) Enterprises GmbH	Germany
Equinix (Germany) GmbH	Germany
Equinix (Real Estate) GmbH	Germany
Upminster GmbH	Germany
Equinix Hyperscale 1 (FR9) GmbH	Germany
Equinix Hyperscale 1 (FR11) GmbH	Germany
Equinix (Hong Kong) Enterprises Limited	Hong Kong
Equinix Hong Kong Limited	Hong Kong

<b>Entity</b>	<b>Jurisdiction</b>
Equinix (Ireland) Enterprises Limited	Ireland
Equinix (Ireland) Limited	Ireland
Equinix (Italia) Enterprises S.r.l.	Italy
Equinix Italia S.r.l.	Italy
Open Hub Med Societa Consortile a responsabilita limitata	Italy
Equinix (Japan) Enterprises K.K.	Japan
Equinix (Japan) Technology Services K.K.	Japan
Equinix Japan K.K (in Kanji)	Japan
Equinix Muscat LLC	Oman
Equinix Middle East Services LLC	Oman
Equinix (China) Investment Holding Co., Ltd (亿利互连(中国)投资有限公司)	People's Republic of China
Equinix Information Technology (Shanghai) Co., Ltd. (亿利互连信息技术(上海)有限公司)	People's Republic of China
Equinix WGQ Information Technology (Shanghai) Co., Ltd. (亿利互连(上海)通讯科技有限公司)	People's Republic of China
Equinix YP Information Technology (Shanghai) Co., Ltd. (亿利互连数据系统(上海)有限公司)	People's Republic of China
Gaohong Equinix (Shanghai) Information Technology Co., Ltd (高鸿亿利(上海)信息技术有限公司)	People's Republic of China
Equinix Information Technologies (India) Private Limited	India
Equinix (Poland) Technology Services sp. z o.o.	Poland
Equinix (Poland) Enterprises sp. z o.o.	Poland
Equinix (Poland) sp. z o.o.	Poland
Equinix (Portugal) Data Centers, S.A.	Portugal
Equinix II (Portugal) Enterprises Data Centers, Unipessoal Lda	Portugal
Equinix Korea LLC	Republic of Korea
Equinix (Singapore) Enterprises Pte. Ltd.	Singapore
Equinix Asia Pacific Holdings Pte. Ltd.	Singapore
Equinix Asia Pacific Pte. Ltd.	Singapore
Equinix Singapore Holdings Pte. Ltd.	Singapore
Equinix Singapore Pte. Ltd.	Singapore
Equinix (Spain) Enterprises, S.L.U.	Spain
Equinix (Spain), S.A.U.	Spain
Equinix (Sweden) AB	Sweden
Equinix (Sweden) Enterprises AB	Sweden
Equinix (Switzerland) Enterprises GmbH	Switzerland
Equinix (Switzerland) GmbH	Switzerland
EMEA Hyperscale 1 C.V.	The Netherlands
Equinix Hyperscale 1 Holdings B.V.	The Netherlands
Equinix (EMEA) Acquisition Enterprises B.V.	The Netherlands
Equinix (EMEA) B.V.	The Netherlands
Equinix (Netherlands) B.V.	The Netherlands
Equinix (Netherlands) Enterprises B.V.	The Netherlands
Equinix (Netherlands) Holdings B.V.	The Netherlands
Equinix (Real Estate) B.V.	The Netherlands
Virtu Secure Webservices B.V.	The Netherlands

<b>Entity</b>	<b>Jurisdiction</b>
Equinix (EMEA) Hyperscale Services B.V.	The Netherlands
Equinix Turkey Data Merkezi Üretim İnşaat Sanayi ve Ticaret Anonim Şirketi	Turkey
Equinix Turkey Enterprises Data Merkezi Üretim İnşaat Sanayi ve Ticaret Anonim Şirketi	Turkey
Equinix Middle East FZ-LLC	United Arab Emirates
Equinix Hyperscale 1 (LD11) Limited	United Kingdom
Equinix (Services) Limited	United Kingdom
Equinix (UK) Enterprises Limited	United Kingdom
Equinix (UK) Limited	United Kingdom
Equinix Hyperscale 1 (France) Holdings SAS	France
Equinix Hyperscale 1 (PA9) SAS	France
Equinix Hyperscale 1 (PA8) SAS	France
Equinix Hyperscale 1 (UK) Financing Limited	United Kingdom
Equinix Hyperscale 1 (LD13) Limited	United Kingdom
Equinix, Hyperscale 1 (AM9) B.V.	The Netherlands
Equinix (MA5) Limited	United Kingdom
Equinix (Poland) Services sp. z o.o	Poland
Equinix Hyperscale 1 (TY14) TMK	Japan
Equinix Hyperscale 1 (OS2) TMK	Japan
Equinix Hyperscale 1 (TY12)TMK	Japan
Equinix Mexico Holdings, S. de R.L. de C.V.	Mexico
Equinix MX Sales, S. de R.L. de C.V.	Mexico
Equinix Apodaca, S. de R.L. de C.V.	Mexico
Equinix Queretaro, S. de R.L. de C.V.	Mexico
Equinix MX Services, S.A. de C.V.	Mexico
Equinix APAC 1 Hyperscale Holdings 1 Pte. Ltd.	Singapore
Equinix APAC 1 Hyperscale Holdings 2 Pte. Ltd.	Singapore
Equinix Hyperscale 1 GK	Japan
Equinix Hyperscale 1 (TY12) GK	Japan
Equinix Hyperscale 1 (TY14) GK	Japan
Equinix Hyperscale 1 (OS2) GK	Japan
Equinix (FR-A) GmbH	Germany
Equinix Hyperscale 1 (Japan) TMK	Japan
Equinix (FR-B) GmbH	Germany
Equinix (PA-A) SAS	France
Equinix (PA-B) SAS	France
Equinix Hyperscale (GP) Pte. Ltd.	Singapore
Equinix APAC Hyperscale 1 (LP) LLC	Delaware
Equinix (APAC) Hyperscale Services Pte. Ltd.	Singapore
APAC 1 Hyperscale LP	Singapore
Equinix APAC 1 Hyperscale Holdings Pte. Ltd.	Singapore

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Charles Meyers, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Charles Meyers

Charles Meyers  
Chief Executive Officer and President  
Dated: July 31, 2020

**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Keith D. Taylor, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Keith D. Taylor

Keith D. Taylor  
Chief Financial Officer  
Dated: July 31, 2020

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending June 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Charles Meyers, Chief Executive Officer and President of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Charles Meyers

Charles Meyers  
Chief Executive Officer and President

July 31, 2020



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending June 30, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Keith D. Taylor, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Keith D. Taylor

Keith D. Taylor  
Chief Financial Officer

July 31, 2020