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

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**FORM 10-Q**

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

For the quarterly period ended March 31, 2003

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

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**EQUINIX, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State of incorporation)

**77-0487526**  
(I.R.S. Employer Identification No.)

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

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

**2450 Bayshore Parkway, Mountain View, California 94043**  
(Former name, former address and former fiscal year, if changed since last report)

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

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

The number of shares outstanding of the Registrant's Common Stock as of March 31, 2003 was 8,518,790.

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## PART I. FINANCIAL INFORMATION

## Item 1. Condensed Consolidated Financial Statements

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

|   | March 31,<br>2003 | December 31,<br>2002 |
|---|-------------------|----------------------|
|   | (unaudited)       |                      |
| <b>Assets</b>   |                   |                      |
| Current assets:   |                   |                      |
| Cash and cash equivalents   | \$ 20,978         | \$ 41,216            |
| Accounts receivable, net  | 10,675            | 9,152                |
| Current portion of restricted cash                                  | —                 | 1,981                |
| Prepays and other current assets                                    | 8,608             | 11,146               |
| Total current assets  | 40,261            | 63,495               |
| Property and equipment, net   | 373,936           | 390,048              |
| Restricted cash, less current portion                               | 2,418             | 2,426                |
| Intangible assets, net  | 24,627            | 24,981               |
| Debt issuance costs, net  | 6,639             | 7,250                |
| Other assets  | 3,605             | 3,803                |
| Total assets  | \$ 451,486        | \$ 492,003           |
| <b>Liabilities and Stockholders' Equity</b>                         |                   |                      |
| Current liabilities:  |                   |                      |
| Accounts payable and accrued expenses                               | \$ 13,937         | \$ 20,347            |
| Accrued restructuring charges                                       | 4,259             | 11,528               |
| Accrued interest payable  | 2,371             | 2,311                |
| Current portion of debt facilities and capital lease obligations    | 4,133             | 5,591                |
| Current portion of credit facility                                  | 1,981             | 1,981                |
| Other current liabilities   | 4,047             | 4,413                |
| Total current liabilities   | 30,728            | 46,171               |
| Debt facilities and capital lease obligations, less current portion | 2,672             | 3,633                |
| Credit facility   | 89,529            | 89,529               |
| Senior notes  | 28,986            | 28,908               |
| Convertible secured note  | 25,602            | 25,354               |
| Other liabilities   | 14,884            | 14,214               |
| Total liabilities   | 192,401           | 207,809              |
| Stockholders' equity:   |                   |                      |
| Preferred stock   | 2                 | 2                    |
| Common stock  | 9                 | 8                    |
| Additional paid-in capital  | 638,134           | 638,065              |
| Deferred stock-based compensation                                   | (1,844)           | (2,865)              |
| Accumulated other comprehensive income (loss)                       | (30)              | 617                  |
| Accumulated deficit   | (377,186)         | (351,633)            |
| Total stockholders' equity  | 259,085           | 284,194              |
| Total liabilities and stockholders' equity                          | \$ 451,486        | \$ 492,003           |

See accompanying notes to condensed consolidated financial statements.

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

|  | Three months ended<br>March 31, |            |
|--|---------------------------------|------------|
|  | 2003                            | 2002       |
| Revenues   | \$ 25,435                       | \$ 20,158  |
| Costs and operating expenses:  |                                 |            |
| Cost of revenues (includes stock-based compensation of \$40 and \$91 for the three months ended March 31, 2003 and 2002, respectively)               | 30,619                          | 25,426     |
| Sales and marketing (includes stock-based compensation of \$113 and \$433 for the three months ended March 31, 2003 and 2002, respectively)          | 4,703                           | 4,170      |
| General and administrative (includes stock-based compensation of \$805 and \$2,057 for the three months ended March 31, 2003 and 2002, respectively) | 10,924                          | 6,741      |
| Total costs and operating expenses   | 46,246                          | 36,337     |
| Loss from operations   | (20,811)                        | (16,179)   |
| Interest income  | 70                              | 493        |
| Interest expense   | (4,812)                         | (9,670)    |
| Gain on debt extinguishment  | —                               | 11,662     |
| Net loss   | \$(25,553)                      | \$(13,694) |
| Net loss per share:  |                                 |            |
| Basic and diluted  | \$ (3.00)                       | \$ (5.16)  |
| Weighted average shares  | 8,512                           | 2,656      |

See accompanying notes to condensed consolidated financial statements.

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

|  | Three months ended<br>March 31, |                  |
|--|---------------------------------|------------------|
|  | 2003                            | 2002             |
|  | (unaudited)                     |                  |
| <b>Cash flows from operating activities:</b>                                       |                                 |                  |
| Net loss   | \$(25,553)                      | \$(13,694)       |
| Adjustments to reconcile net loss to net cash used in operating activities:        |                                 |                  |
| Depreciation   | 16,254                          | 12,059           |
| Amortization of intangible assets  | 525                             | —                |
| Amortization of deferred stock-based compensation                                  | 958                             | 2,581            |
| Non-cash interest expense  | 2,086                           | 1,566            |
| Allowance for doubtful accounts  | 154                             | 482              |
| Deferred rent  | 833                             | 691              |
| Gain on debt extinguishment  | —                               | (11,662)         |
| Changes in operating assets and liabilities:                                       |                                 |                  |
| Accounts receivable  | (1,677)                         | (1,640)          |
| Prepays and other current assets   | 2,538                           | (344)            |
| Other assets   | 172                             | 1,945            |
| Accounts payable and accrued expenses  | (2,642)                         | (105)            |
| Accrued restructuring charges  | (7,919)                         | 102              |
| Accrued merger and financing costs   | (3,768)                         | —                |
| Accrued interest payable   | (990)                           | 6,201            |
| Other current liabilities  | (366)                           | (349)            |
| Other liabilities  | (163)                           | 122              |
|  | <u>(19,558)</u>                 | <u>(2,045)</u>   |
| <b>Cash flows from investing activities:</b>                                       |                                 |                  |
| Purchase of short-term investments   | —                               | (11,788)         |
| Sales and maturities of short-term investments                                     | —                               | 19,282           |
| Purchases of property and equipment  | (346)                           | (2,836)          |
| Accrued construction costs   | —                               | (24,000)         |
| Purchase of restricted cash and short-term investments                             | —                               | (5,090)          |
| Sale of restricted cash and short-term investments                                 | 1,989                           | 2,854            |
|  | <u>1,643</u>                    | <u>(21,578)</u>  |
| <b>Cash flows from financing activities:</b>                                       |                                 |                  |
| Proceeds from exercise of warrants, stock options and employee stock purchase plan | 159                             | 341              |
| Debt issuance costs  | —                               | (5)              |
| Repayment of debt facilities and capital lease obligations                         | (2,518)                         | (1,717)          |
|  | <u>(2,359)</u>                  | <u>(1,381)</u>   |
| Effect of foreign currency exchange rates on cash and cash equivalents             | 36                              | (74)             |
| Net decrease in cash and cash equivalents  | (20,238)                        | (25,078)         |
| Cash and cash equivalents at beginning of period                                   | 41,216                          | 58,831           |
| Cash and cash equivalents at end of period   | <u>\$ 20,978</u>                | <u>\$ 33,753</u> |
| <b>Supplemental cash flow information:</b>   |                                 |                  |
| Cash paid for interest   | <u>\$ 3,793</u>                 | <u>\$ 2,265</u>  |

See accompanying notes to condensed consolidated financial statements.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

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

The accompanying unaudited condensed consolidated financial statements have been prepared by Equinix, Inc. (“Equinix” or the “Company”) and reflect all adjustments, consisting only of normal recurring adjustments, which in the opinion of management are necessary to present fairly the financial position and the results of operations for the interim periods presented. The balance sheet at December 31, 2002 has been derived from audited financial statements at that date. The financial statements have been prepared in accordance with the regulations of the Securities and Exchange Commission (“SEC”), but omit certain information and footnote disclosure necessary to present the statements in accordance with generally accepted accounting principles. For further information, refer to the Consolidated Financial Statements and Notes thereto included in Equinix’s Form 10-K/A as filed with the SEC on April 25, 2003. Results for the interim periods are not necessarily indicative of results for the entire fiscal year.

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

The accompanying consolidated financial statements include the accounts of Equinix and its subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

In October 2002, the Company entered into agreements to consummate a series of related acquisition and financing transactions. These transactions closed on December 31, 2002. Under the terms of these agreements, the Company combined its business with two similar businesses, that of i-STT Pte Ltd (“i-STT”) and Pihana Pacific, Inc. (“Pihana”). i-STT’s business is based in Singapore, with operations in Singapore and a joint venture in Thailand. Pihana’s business is based in Hawaii, with operations in Hawaii; Los Angeles; Hong Kong; Singapore; Tokyo, Japan and Sydney, Australia. In connection with the acquisition of i-STT and Pihana, the Company issued approximately 3.5 million shares of its common stock and approximately 1.9 million shares of its Series A preferred stock. This transaction is referred to as the “Combination”. In conjunction with the Combination, the Company issued to i-STT’s former parent company, STT Communications Ltd. (“STT Communications”), a \$30.0 million convertible secured note in exchange for cash. This transaction is referred to as the “Financing”. In connection with the Combination and Financing, the Company amended the terms of the indenture governing its Senior Notes and extinguished \$116.8 million of its Senior Notes in exchange for a combination of 1.9 million shares of its common stock and \$15.2 million of cash. This transaction is referred to as the “Senior Note Exchange”. Because the Company extinguished the debt in the Senior Note Exchange at a significant discount, the Company recognized a substantial gain on debt extinguishment during the fourth quarter of 2002.

Under the terms of the Company’s Credit Facility, as amended, the Company must meet certain financial and non-financial covenants. While these covenants were reset in December 2002 and are consistent with the Company’s expected future performance, if the Company does not achieve the intended growth required or is unable to reduce costs to a level to comply with these covenants, the Company may be required to repay the \$91.5 million currently outstanding under the Credit Facility (see Note 9). Since the Company does not have sufficient cash reserves to pay this if an event of default occurs, the Company may be required to renegotiate with the debt issuers for forbearance, make other financial arrangements or take other actions in order to pay down the loan. There can be no assurance that such revised covenants will be met, or that the Company will be able to obtain a forbearance or that replacement financing will be available. In addition, a default in the Credit Facility will trigger cross-default provisions in our other debt facilities. If the cash flows from operations are not sufficient to support the Company’s cash requirements, cost reductions implemented as a result of this could adversely affect the business and the Company’s ability to achieve its business objectives. As of March 31, 2003, the Company was in compliance with all debt covenants.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

***Stock Split***

In December 2002, the Company effected a thirty-two-for-one reverse stock split effective December 31, 2002 whereby one share of common stock was exchanged for every thirty-two shares of common stock then outstanding. All share and per share amounts in these financial statements have been retroactively adjusted to give effect to the stock split.

***Revenue Recognition and Allowance for Doubtful Accounts***

Equinix derives its revenues from (1) recurring revenue streams, such as from the leasing of cabinet space, power and interconnection services and bandwidth and (2) non-recurring revenue streams, such as from the recognized portion of deferred installation revenues, professional services and equipment sales. Revenues from recurring revenue streams are billed monthly and recognized ratably over the term of the contract, generally one to three years. Non-recurring installation fees are deferred and recognized ratably over the term of the related contract. Professional service fees are recognized in the period in which the services were provided and represent the culmination of the earnings process. Fees for the provision of e-business services are recognized progressively as the services are rendered in accordance with the contract terms, except where the future costs cannot be reliably estimated, in which case fees are recognized upon the completion of services. The Company generally guarantees certain service levels, such as uptime, as outlined in individual customer contracts. To the extent that these service levels are not achieved, the Company reduces revenue for any credits given to the customer as a result. The Company has the ability to determine such service level credits prior to the associated revenue being recognized, and historically, these credits have not been significant.

Revenue is recognized as service is provided when there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection of the receivable is reasonably assured. It is customary business practice to obtain a signed master sales agreement and sales order prior to recognizing revenue in an arrangement. The Company assesses probability of collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. The Company does not request collateral from our customers. If the Company determines that collection of a fee is not reasonably assured, the Company defers the fee and recognizes revenue at the time collection becomes reasonably assured, which is generally upon receipt of cash. In addition, Equinix also maintains an allowance for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments for those customers that the Company had expected to collect the revenues. If the financial condition of Equinix's customers were to deteriorate or if they become insolvent, resulting in an impairment of their ability to make payments, allowances for doubtful accounts may be required. Management specifically analyzes accounts receivable and analyzes current economic news and trends, historical bad debts, customer concentrations, customer credit-worthiness and changes in customer payment terms when evaluating revenue recognition and the adequacy of the Company's reserves.

## EQUINIX, INC.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

In February and March 2002, the Company entered into arrangements with numerous vendors to resell equipment and bandwidth, including two related parties. The Company began to offer such services in an effort to provide its customers a more fully-integrated services solution. Under the terms of the reseller agreements, the Company will sell the vendors' services or products to its customers and the Company will contract with the vendor to provide the related services or products. The Company recognizes revenue from such arrangements on a gross basis in accordance with EITF Abstract No. 99-19, "Recording Revenue as a Principal versus Net as an Agent". The Company acts as the principal in the transaction as the Company's customer services agreement identifies the Company as the party responsible for the fulfillment of product/ services to the Company's customers and has full pricing discretion. In the case of products sold under such arrangements, the Company takes title to the products and bears the inventory risk as the Company has made minimum purchase commitments to various vendors. The Company has credit risk, as it is responsible for collecting the sales price from a customer, but must pay the amount owed to its suppliers after the suppliers perform, regardless of whether the sales price is fully collected. In addition, the Company will often determine the required equipment configuration and recommend bandwidth providers from numerous potential suppliers. The Company had no equipment sales during the three months ended March 31, 2003. For the three months ended March 31, 2002, the Company recognized revenue of \$1.6 million from the sale of equipment and associated cost of revenue of \$1.5 million. The Company does not expect to enter into significant equipment resales in the future.

**Net Loss per Share**

The Company computes net loss per share in accordance with SFAS No. 128, "Earnings per Share," and SEC Staff Accounting Bulletin ("SAB") No. 98. Under the provisions of SFAS No. 128 and SAB No. 98 basic and diluted net loss per share are computed using the weighted average number of common shares outstanding. Options, warrants and preferred stock were not included in the computation of diluted net loss per share because the effect would be anti-dilutive.

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

|  | Three months ended<br>March 31, |             |
|--|---------------------------------|-------------|
|  | 2003                            | 2002        |
| <b>Numerator:</b>                                      |                                 |             |
| Net loss   | \$ (25,553)                     | \$ (13,694) |
| <b>Denominator:</b>                                    |                                 |             |
| Weighted average shares                                | 8,517                           | 2,697       |
| Weighted average unvested shares subject to repurchase | (5)                             | (41)        |
| Total weighted average shares                          | 8,512                           | 2,656       |
| <b>Net loss per share:</b>                             |                                 |             |
| Basic and diluted                                      | \$ (3.00)                       | \$ (5.16)   |



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

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

|                                    | March 31, |         |
|------------------------------------|-----------|---------|
|                                    | 2003      | 2002    |
| Series A preferred stock           | 1,868,667 | —       |
| Series A preferred stock warrant   | 965,674   | —       |
| Common stock warrants              | 250,836   | 65,831  |
| Common stock options               | 3,231,870 | 642,624 |
| Common stock subject to repurchase | 5,328     | 41,382  |

***Stock-Based Compensation***

The Company accounts for its stock-based compensation arrangements with employees using the intrinsic-value method in accordance with Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees”. Deferred stock-based compensation is recorded on the date of grant when the deemed fair value of the underlying common stock exceeds the exercise price for stock options or the purchase price of common stock.

Deferred stock-based compensation resulting from option grants to employees is amortized on an accelerated basis over the vesting period of the individual options, generally four years, in accordance with FASB Interpretation No. 28, “Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans”.

Primarily as a result of employee stock options being granted at exercise prices below fair market value prior to the Company’s initial public offering (“IPO”) in August 2000, the Company recorded a deferred stock-based compensation charge on its balance sheet of \$54,537,000 in 2000, which is being amortized over the four-year vesting life of these individual stock options net of the reversal of any previously recorded accelerated stock-based compensation expense due to the forfeitures of those stock options prior to vesting. As of March 31, 2003, there was \$1,844,000 of deferred stock-based compensation remaining to be amortized, primarily related to these pre-IPO employee stock options. The Company expects stock-based compensation expense to impact its results of operations through 2004.

The following table presents, by operating expense, the Company’s amortization of stock-based compensation expense (in thousands):

|                            | Three months ended March 31, |          |
|----------------------------|------------------------------|----------|
|                            | 2003                         | 2002     |
| Cost of revenues           | \$ 40                        | \$ 91    |
| Sales and marketing        | 113                          | 433      |
| General and administrative | 805                          | 2,057    |
|                            | \$ 958                       | \$ 2,581 |

## EQUINIX, INC.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company has adopted the disclosure requirements of SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – An Amendment of SFAS No. 123". The following table presents what the net loss and net loss per share would have been had the Company adopted SFAS No. 123 (in thousands, except per share data):

|   | Three months ended<br>March 31, |             |
|---|---------------------------------|-------------|
|   | 2003                            | 2002        |
| Net loss as reported  | \$ (25,553)                     | \$ (13,694) |
| Stock-based compensation expense included in net loss             | 958                             | 2,581       |
| Stock-based compensation expense if SFAS No. 123 had been adopted | (3,425)                         | (4,265)     |
| Pro forma net loss  | \$ (28,020)                     | \$ (15,378) |
| Basic and diluted net loss per share:                             |                                 |             |
| As reported   | \$ (3.00)                       | \$ (5.16)   |
| Pro forma   | (3.29)                          | (5.79)      |

The Company's fair value calculations for employee grants were made using the Black-Scholes option pricing model with the following weighted average assumptions:

|                          | Three months ended March 31, |       |
|--------------------------|------------------------------|-------|
|                          | 2003                         | 2002  |
| Dividend yield           | 0%                           | 0%    |
| Expected volatility      | 135%                         | 135%  |
| Risk-free interest rate  | 3.75%                        | 3.75% |
| Expected life (in years) | 3.50                         | 3.50  |

The Company's fair value calculations for employee's stock purchase rights under the employee stock purchase plan were made using the Black-Scholes option pricing model with weighted average assumptions consistent with those used for employee grants as indicated above; however, the assumption for expected life (in years) used for the employee stock purchase plan was 2 years for all periods presented.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Intangible Assets*

In July 2001, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 142, “Goodwill and Other Intangible Assets,” which is effective for fiscal years beginning after December 15, 2001. SFAS No. 142 provides, among other things, that goodwill should not be amortized after its initial recognition in financial statements. In addition, the standard includes provisions for testing for impairment of existing goodwill and other intangibles. As of January 1, 2002, the Company adopted SFAS No. 142 and recorded goodwill as part of the Combination, which closed on December 31, 2002 (see Note 2). In lieu of amortization, the Company is required to perform an impairment review of its goodwill balance on at least on an annual basis and upon the initial adoption of SFAS No. 142. This impairment review involves a two-step process as follows:

Step 1 — The Company compares the fair value of its reporting units to the carrying value, including goodwill of each of those units. For each reporting unit where the carrying value, including goodwill, exceeds the unit’s fair value, the Company moves on to step 2. If a unit’s fair value exceeds the carrying value, no further work is performed and no impairment charge is necessary.

Step 2 — The Company performs an allocation of the fair value of the reporting unit to its identifiable tangible and non-goodwill intangible assets and liabilities. This derives an implied fair value for the reporting unit’s goodwill. The Company then compares the implied fair value of the reporting unit’s goodwill with the carrying amount of the reporting unit’s goodwill. If the carrying amount of the reporting unit’s goodwill is greater than the implied fair value of its goodwill, an impairment charge would be recognized for the excess.

During the quarter ended March 31, 2003, the Company recorded an adjustment to increase goodwill acquired in the i-STT Acquisition by \$650,000 as a result of recording a liability related to the wind-down of the joint venture in Thailand, i-STT Nation Limited (see Note 2).

Other identifiable intangible assets, comprised of customer contracts and tradename, are carried at cost, less accumulated amortization. No amortization was recognized in fiscal 2002 as the Combination was consummated on December 31, 2002. Beginning in fiscal 2003, the Company has started to amortize these other identifiable intangibles on a straight-line basis over their estimated useful lives, which are two years for customer contracts and one year for tradename. For the three months ended March 31, 2003, the Company recorded \$525,000 of amortization expense related to these intangible assets.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**2. The Combination**

*Acquisition of i-STT*

On December 31, 2002, a wholly-owned subsidiary of the Company acquired all issued and outstanding shares of i-STT from STT Communications (the “i-STT Acquisition”). i-STT is a similar business to that of Equinix with IBX hub operations in Singapore and Thailand. The entire purchase price of \$34,365,000 was comprised of (i) 1,868,667 shares of the Company’s Series A preferred stock and 1,084,686 shares of the Company’s common stock, with a total value of \$31,187,000 and (ii) total cash consideration and direct transaction costs of \$3,178,000.

The Company accounted for the i-STT Acquisition using the purchase method. The preliminary purchase price, including direct merger costs, have been allocated to the net tangible and intangible assets acquired and liabilities assumed based on their estimated fair value at the date of acquisition. Included in the net liabilities assumed, is an accrual of \$400,000 representing the estimated costs to exit from an undeveloped IBX hub leasehold interest in Shanghai, China. The Company expects to exit this lease in 2003. During the quarter ended March 31, 2003, the Company recorded an adjustment to increase the goodwill acquired in the i-STT Acquisition by \$650,000 as a result of the decision to wind-down the joint venture in Thailand, i-STT Nation Limited. The Company estimates that its share of the costs to shut down the joint venture will not exceed \$650,000. The Company expects to fund the costs of wind-down in 2003. While the Company does not expect there will be any additional changes to the Company’s preliminary purchase price due to any unknown contingent liabilities or purchase price adjustments, any subsequent adjustment to the purchase price would result in a further change to the amount of goodwill carried on the balance sheet.

*Acquisition of Pihana*

On December 31, 2002, a wholly-owned subsidiary of the Company merged with and into Pihana (the “Pihana Acquisition”). Pihana is a similar business to that of Equinix with IBX hub operations in Singapore; Tokyo, Japan; Sydney, Australia; Hong Kong, China, as well as Los Angeles and Honolulu in the U.S. The entire purchase price of \$28,376,000 was comprised of (i) 2,416,379 shares of the Company’s common stock, with a total value of \$25,517,000, (ii) total cash consideration and direct transaction costs of \$2,683,000 and (iii) the value of Pihana shareholder warrants assumed in the Pihana Acquisition of \$176,000 (the “Pihana Shareholder Warrants”).

The Company accounted for the Pihana Acquisition using the purchase method. The preliminary purchase price, including direct merger costs, have been allocated to assets acquired and liabilities assumed based on their estimated fair value at the date of acquisition. Included in the net liabilities assumed are total restructuring charges of \$9,470,000, which relate primarily to the exit of the undeveloped portion of the Pihana Los Angeles IBX hub leasehold, severance related to an approximate 30% reduction in workforce, including several officers of Pihana and some transaction-related professional fees. A substantial portion of these costs were paid in January 2003 (see below). Prior to December 31, 2002, Pihana sold their Korean IBX hub operations, which was excluded from the Pihana Acquisition, terminated or amended several operating leaseholds and recorded a substantial impairment charge against the value of their property and equipment assumed in the Pihana Acquisition. Any subsequent adjustment to the purchase price would result in a change to the amount of property and equipment assumed in the Pihana Acquisition.

## EQUINIX, INC.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Acquired Restructuring Accruals*

As a result of the Combination, the Company acquired several accruals related to restructuring activities from both i-STT and Pihana, which were commenced in 2002, but will not be completed until 2003. A summary of the movement in these acquired restructuring accruals from December 31, 2002 to March 31, 2003 is outlined as follows (in thousands) (unaudited):

|                                      | Acquired<br>restructuring accruals<br>as of December 31,<br>2002 | Purchase<br>price<br>adjustments | Cash<br>payments | Acquired<br>restructuring<br>accruals as of<br>March 31,<br>2003 |
|--------------------------------------|--|----------------------------------|------------------|--|
| Workforce reduction and relocation   | \$ 5,712   | \$ —                             | \$(3,951)        | \$ 1,761   |
| Lease exit and office shutdown costs | 1,735  | —                                | (1,063)          | 672  |
| Other professional fees              | 2,423  | —                                | (2,240)          | 183  |
| Thailand joint venture accrual       | —  | 650                              | —                | 650  |
|                                      | <u>\$ 9,870</u>  | <u>\$ 650</u>                    | <u>\$(7,254)</u> | <u>\$ 3,266</u>  |

During the three months ended March 31, 2003, the Company recorded a liability of \$650,000 as a result of the decision to wind-down the joint venture in Thailand, i-STT Nation Limited, which was recorded as an adjustment to the goodwill acquired in the i-STT Acquisition. The Company estimates that its share of the costs to shut down the joint venture will not exceed \$650,000. The Company expects to fund the costs of wind-down in 2003.

A significant portion of the above remaining activities will be completed and paid during the second and third quarters of 2003.

*Preliminary Unaudited Pro Forma Consolidated Combined Results*

The operating results of i-STT and Pihana were included in the Company's consolidated statements of operations and cash flows commencing on December 31, 2002. The following preliminary unaudited pro forma financial information presents the consolidated results of the Company as if the i-STT Acquisition and Pihana Acquisition had occurred as of January 1, 2002, and includes adjustments to exclude the Korean operations not acquired in the Pihana Acquisition. This preliminary pro forma financial information does not necessarily reflect the results of operations as they would have been if the Company had acquired these entities as of January 1, 2002. Preliminary unaudited pro forma consolidated results of operations for the three months ended March 31, 2002 are as follows (in thousands, except per share data):

|                                      |           |
|--------------------------------------|-----------|
| Revenues                             | \$ 23,179 |
| Net loss                             | (23,688)  |
| Basic and diluted net loss per share | (3.85)    |

**3. Related Party Transactions**

As a result of the Combination, the Company acquired operations in Asia-Pacific. The majority of the Company's Asia-Pacific revenues are generated in Singapore and a significant portion of the business in Singapore is transacted with entities affiliated with STT Communications, which is the Company's single largest stockholder. For the three months ended March 31, 2003, revenues recognized with entities affiliated with STT Communications were \$1,540,000 and as of March 31, 2003, accounts receivable with entities affiliated with STT Communications was \$1,131,000. For the three months ended March 31, 2003, costs and services procured with entities affiliated with STT Communications were \$121,000 and as of March 31, 2003, accounts payable with entities affiliated with STT Communications was \$534,000.

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

**4. Accounts Receivable**

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

|                                 | March 31,<br>2003 | December 31,<br>2002 |
|---------------------------------|-------------------|----------------------|
|                                 | (unaudited)       |                      |
| Accounts receivable             | \$ 17,960         | \$ 16,017            |
| Unearned revenue                | (6,758)           | (6,468)              |
| Allowance for doubtful accounts | (527)             | (397)                |
|                                 | <u>\$ 10,675</u>  | <u>\$ 9,152</u>      |

Unearned revenue consists of pre-billing for services that have not yet been provided, but which have been billed to customers ahead of time in accordance with the terms of their contract. Accordingly, the Company invoices its customers at the end of a calendar month for services to be provided the following month.

**5. Restricted Cash**

In December 2002, the Company funded a Senior Note interest payment due on December 1, 2002 to the trustee of the Senior Notes, totaling \$1,981,000, with cash that was classified as current restricted cash on the accompanying balance sheet as of December 31, 2002. In January 2003, the trustee of the Senior Notes released this restricted cash to the holders of the Senior Notes.

**6. Prepaids and Other Current Assets**

Prepaids and other current assets consist of the following (in thousands):

|                      | March 31,<br>2003 | December 31,<br>2002 |
|----------------------|-------------------|----------------------|
|                      | (unaudited)       |                      |
| Prepaid rent         | \$ 4,455          | \$ 4,913             |
| Prepaid insurance    | 853               | 1,507                |
| Prepaid other        | 687               | 1,142                |
| Taxes receivable     | 2,289             | 2,391                |
| Other current assets | 324               | 1,193                |
|                      | <u>\$ 8,608</u>   | <u>\$ 11,146</u>     |

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

**7. Property and Equipment**

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

|                                 | March 31,<br>2003 | December 31,<br>2002 |
|---------------------------------|-------------------|----------------------|
|                                 | (unaudited)       |                      |
| Leasehold improvements          | \$ 380,503        | \$ 384,334           |
| IBX plant and machinery         | 61,629            | 61,761               |
| Computer equipment and software | 17,610            | 17,580               |
| IBX equipment                   | 33,822            | 33,677               |
| Furniture and fixtures          | 1,875             | 2,522                |
|                                 | 495,439           | 499,716              |
| Less accumulated depreciation   | (121,503)         | (109,826)            |
|                                 | <u>\$ 373,936</u> | <u>\$ 390,048</u>    |

Leasehold improvements, certain computer equipment, software and furniture and fixtures recorded under capital leases aggregated \$5,627,000 and \$5,779,000 at March 31, 2003 and December 31, 2002, respectively. Amortization on the assets recorded under capital leases is included in depreciation expense.

Included within leasehold improvements is the value attributed to the earned portion of several warrants issued to certain fiber carriers and our contractor totaling \$9,883,000 at both March 31, 2003 and December 31, 2002. Amortization of such warrants is included in depreciation expense.

During the quarter ended March 31, 2003, the Company moved into its new corporate headquarter office in Foster City, California, from Mountain View, California, and as a result, disposed of approximately \$4,569,000 of fully depreciated property and equipment, primarily leasehold improvements and furniture and fixtures.

**8. Accounts Payable and Accrued Expenses**

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

|   | March 31,<br>2003 | December 31,<br>2002 |
|---|-------------------|----------------------|
|   | (unaudited)       |                      |
| Accounts payable                          | \$ 5,025          | \$ 7,243             |
| Accrued merger and financing costs        | 720               | 4,488                |
| Accrued compensation and benefits         | 2,042             | 2,548                |
| Accrued taxes                             | 1,020             | 690                  |
| Accrued utility and security              | 1,532             | 771                  |
| Accrued professional fees                 | 1,159             | 1,046                |
| Accrued property and equipment            | 295               | 1,304                |
| Accrued rent and lease operating expenses | 947               | 691                  |
| Accrued repairs and maintenance           | 497               | 528                  |
| Accrued other                             | 700               | 1,038                |
|   | <u>\$ 13,937</u>  | <u>\$ 20,347</u>     |

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**9. Debt Facilities**

***Wells Fargo Loan***

In January 2003, the Company entered into a settlement agreement with Wells Fargo in connection with a lawsuit related to the Wells Fargo Loan (the “Wells Fargo Settlement”). In compliance with the terms of the Wells Fargo Settlement, in February 2003, the Company paid Wells Fargo \$1,703,000 in full satisfaction of all amounts owed to Wells Fargo, including the \$1,631,000 in principal recorded within the current portion of debt facilities and capital lease obligations on the Company’s accompanying balance sheet as of December 31, 2002. As part of the Wells Fargo Settlement, the lawsuit has been dismissed and the Wells Fargo Loan terminated.

***Maturities***

Combined aggregate maturities for the Company’s various debt facilities and capital lease obligations, Credit Facility, Senior Notes and Convertible Secured Note as of March 31, 2003 are as follows (in thousands) (unaudited):

|   | Debt<br>facilities &<br>capital lease<br>obligations | Credit<br>facility | Senior<br>notes | Convertible<br>secured note | Total      |
|---|--|--------------------|-----------------|-----------------------------|------------|
| 2003  | \$ 3,334   | \$ 1,981           | \$ —            | \$ —                        | \$ 5,315   |
| 2004  | 3,019  | 6,981              | —               | —                           | 10,000     |
| 2005  | 729  | 82,548             | —               | —                           | 83,277     |
| 2006  | —  | —                  | —               | —                           | —          |
| 2007  | —  | —                  | 30,475          | 30,000                      | 60,475     |
|   | 7,082  | 91,510             | 30,475          | 30,000                      | 159,067    |
| Less amount representing unamortized discount | (277)  | —                  | (1,489)         | (4,398)                     | (6,164)    |
|   | 6,805  | 91,510             | 28,986          | 25,602                      | 152,903    |
| Less current portion                          | (4,133)  | (1,981)            | —               | —                           | (6,114)    |
|   | \$ 2,672   | \$ 89,529          | \$ 28,986       | \$ 25,602                   | \$ 149,461 |

**10. Stockholders’ Equity**

On January 1, 2003, pursuant to the provisions of the Company’s stock plans, the number of common shares in reserve automatically increased by 506,921 shares for the 2000 Equity Incentive Plan, 168,974 shares for the Employee Stock Purchase Plan and 50,000 shares for the 2000 Director Stock Option Plan.

In March 2003, the Board of Directors granted options to all employees as part of an annual grant to all employees, including all officers of the Company, to purchase 2,663,600 shares of common stock at a weighted average exercise price of \$3.25 per share under the Plans.

**11. Commitments and Contingencies**

***Operating Lease Commitments***

In February 2003, the Company entered into a new corporate headquarter lease in Foster City, California, which commenced March 2003 and ends in March 2008 and prepaid rent through December 31, 2003. In March 2003, the Company terminated its Mountain View, California, corporate headquarter lease and moved its corporate headquarters to the new office facility in Foster City.



EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Contingent Liabilities*

During the quarter ended September 30, 2001, putative shareholder class action lawsuits were filed against the Company, certain of its officers and directors, and several investment banks that were underwriters of the Company's initial public offering. The suits allege that the underwriter defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. The Company and its officers and directors intend to defend the action vigorously. On October 9, 2002, as part of an agreement with the plaintiffs in such lawsuits, all claims against the Company's officers and directors were dismissed without prejudice. The Company believes that more than one hundred other companies have been named in nearly identical lawsuits that have been filed by some of the same plaintiffs' law firms. The Company believes it has adequate legal defenses and believes that the ultimate outcome of these actions will not have a material effect on the Company's consolidated financial position, results of operations or cash flows, although there can be no assurance as to the outcome of such litigation. Furthermore, no range of loss can be estimated at this time.

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues contingent liabilities when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. In the opinion of management, there are no pending claims of which the outcome is expected to result in a material adverse effect in the financial position or results of operations of the Company.

*Guarantor Arrangements*

In November 2002, the FASB issued FIN No. 45 "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, an interpretation of FASB Statements No. 5, 57, and 107 and rescission of FASB Interpretation No. 34 ("FIN 45"). FIN 45 requires that a guarantor recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken by issuing the guarantee. FIN 45 also requires additional disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees it has issued. The accounting requirements for the initial recognition of guarantees are applicable on a prospective basis for guarantees issued or modified after December 31, 2002. The disclosure requirements are effective for all guarantees outstanding, regardless of when they were issued or modified, during the first quarter of fiscal 2003. The following is a summary of the agreements that the Company has determined are within the scope of FIN 45.

As permitted under Delaware law, the Company has agreements whereby the Company indemnifies its officers and directors for certain events or occurrences while the officer or director is, or was serving, at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has a director and officer insurance policy that limits the Company's exposure and enables the Company to recover a portion of any future amounts paid. As a result of the Company's insurance policy coverage, the Company believes the estimated fair value of these indemnification agreements is minimal. All of these indemnification agreements were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded for these agreements as of March 31, 2003.

**EQUINIX, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The Company enters into standard indemnification agreements in the ordinary course of business. Pursuant to these agreements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally the Company's business partners or customers, in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the Company's services. The term of these indemnification agreements is generally perpetual any time after execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the estimated fair value of these agreements is minimal. These indemnification agreements were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded for these agreements as of March 31, 2003.

The Company enters into arrangements with its business partners, whereby the business partner agrees to provide services as a subcontractor for the Company's implementations. The Company may, at its discretion and in the ordinary course of business, subcontract the performance of any of its services. Accordingly, the Company enters into standard indemnification agreements with its customers, whereby the Company indemnifies them for other acts, such as personal property damage, of its subcontractors. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has general and umbrella insurance policies that enable the Company to recover a portion of any amounts paid. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the Company believes the estimated fair value of these agreements is minimal. These arrangements were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded for these agreements as of March 31, 2003.

The Company has service level commitment obligations to certain of its customers. As a result, service interruptions or significant equipment damage in the Company's IBX hubs, whether or not within our control, could result in service level commitments to these customers. The Company's liability insurance may not be adequate to cover those expenses. In addition, any loss of services, equipment damage or inability to meet the Company's service level commitment obligations, particularly in the early stage of the Company's development, could reduce the confidence of the Company's customers and could consequently impair the Company's ability to obtain and retain customers, which would adversely affect both the Company's ability to generate revenues and the Company's operating results. Historically, these service level credits have not been significant. These arrangements were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, the Company has no significant liabilities for these agreements as of March 31, 2003.

Under the terms of the Combination Agreement, the Company is contractually obligated to use the Company's reasonable best efforts to obtain the release of STT Communications from a bank guarantee associated with i-STT's unconsolidated Thailand joint venture, i-STT Nation Limited. Such efforts may include i-STT assuming such guarantee if it is commercially reasonable to do so. This guarantee is for 60% of a Thai baht 260,000,000 bank loan (approximately \$6,058,000 as translated using effective exchange rates at March 31, 2003), of which Thai baht 58,300,000 is currently outstanding as of March 31, 2003 (approximately \$1,358,000 as translated using effective exchange rates at March 31, 2003). Currently, neither the Company nor i-STT have assumed any portion of this guarantee. In addition, this arrangement was grandfathered under the provisions of FIN 45 as it was in effect prior to December 31, 2002.

## EQUINIX, INC.

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Under the terms of the Combination Agreement (see Note 2), the Company is contractually obligated to use commercially reasonable efforts to ensure that at all times from and after the closing of the Combination, until such time as neither STT Communications nor its affiliates hold the Company's capital stock or debt securities (or the capital stock received upon conversion of the debt securities) received by STT Communications in connection with the Combination, that none of the Company's capital stock issued to STT Communications is constituted as "United States real property interests" within the meaning of Section 897(c) of the Internal Revenue Code of 1986. Under Section 897(c) of the Code, the Company's capital stock issued to STT Communications would generally constitute "United States real property interests" at such point in time that the fair market value of the "United States real property interests" owned by the Company equals or exceeds 50% of the sum of the aggregate fair market values of (a) the Company's "United States real property interests," (b) the Company's interests in real property located outside the U.S., and (c) any other assets held by the Company which are used or held for use in the Company's trade or business. The Company refers to this provision in the Combination Agreement as the FIRPTA covenant. Pursuant to the FIRPTA covenant, the Company may be forced to take commercially reasonable proactive steps to ensure the Company's compliance with the FIRPTA covenant, including, but not limited to, (a) a sale-leaseback transaction with respect to all real property interests, or (b) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all of the Company's outstanding stock (this reorganization would require the submission of that transaction to the Company's stockholders for their approval and the consummation of that exchange). Currently, the Company is in compliance with the FIRPTA covenant. This arrangement was grandfathered under the provisions of FIN 45 as it was in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded related to non-compliance with the FIRPTA covenant as of March 31, 2003.

When as part of an acquisition the Company acquires all of the stock or all of the assets and liabilities of a company, we assume the liability for certain events or occurrences that took place prior to the date of acquisition. The maximum potential amount of future payments the Company could be required to make for such obligations is undeterminable at this time. All of these obligations were grandfathered under the provisions of FIN No. 45 as they were in effect prior to December 31, 2002. Accordingly, we have no liabilities recorded for these liabilities as of March 31, 2003.

**12. Comprehensive Loss**

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

|  | Three months ended<br>March 31, |             |
|--|---------------------------------|-------------|
|  | 2003                            | 2002        |
| Net loss   | \$ (25,553)                     | \$ (13,694) |
| Unrealized loss on available for sale securities | —                               | (29)        |
| Foreign currency translation loss                | (646)                           | (74)        |
| Comprehensive loss                               | \$ (26,199)                     | \$ (13,797) |

There were no significant tax effects on comprehensive loss for the three months ended March 31, 2003 and 2002.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**13. Segment Information**

The Company and its subsidiaries are principally engaged in the design, build-out and operation of neutral IBX hubs. All revenues result from the operation of these IBX hubs. Accordingly, the Company considers itself to operate in a single segment for purposes of disclosure under SFAS No. 131. The Company's chief operating decision-maker evaluates performance, makes operating decisions and allocates resources based on financial data consistent with the presentation in the accompanying consolidated financial statements.

Due to the Combination (see Note 2), the Company acquired operations in Asia-Pacific effective December 31, 2002. As a result, the Company's consolidated balance sheet as of March 31, 2003, includes certain assets based in Asia-Pacific. In addition, commencing in fiscal 2003, the Company's consolidated statement of operations includes revenues and expenses from Asia-Pacific. In September 2001, the Company recorded a restructuring charge, primarily related to the Company's revised European strategy, and as a result, wrote-off all of the Company's European long-lived assets and began the process of winding down its development stage European operations.

The Company's geographic statement of operations disclosures are as follows (in thousands) (unaudited):

|   | Three months ended<br>March 31, |                    |
|---|---------------------------------|--------------------|
|   | 2003                            | 2002               |
| <b>Total revenues:</b>                      |                                 |                    |
| United States                               | \$ 21,280                       | \$ 20,158          |
| Asia-Pacific                                | 4,155                           | —                  |
|   | <u>\$ 25,435</u>                | <u>\$ 20,158</u>   |
| <b>Total income (loss) from operations:</b> |                                 |                    |
| United States                               | \$ (16,604)                     | \$ (16,508)        |
| Asia-Pacific                                | (4,207)                         | —                  |
| Europe                                      | —                               | 329                |
|   | <u>\$ (20,811)</u>              | <u>\$ (16,179)</u> |

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

|               | March 31,<br>2003 | December 31,<br>2002 |
|---------------|-------------------|----------------------|
| United States | \$ 374,343        | \$ 389,367           |
| Asia-Pacific  | 36,882            | 39,139               |
|               | <u>\$ 411,225</u> | <u>\$ 428,506</u>    |

Revenue from one customer accounted for 17% of the Company's revenues for the three months ended March 31, 2003. Revenues from two customers accounted for 20% and 10%, respectively, of the Company's revenues for the three months ended March 31, 2002. No other single customer accounted for more than 10% of the Company's revenues for the three months ended March 31, 2003 and 2002. Accounts receivables from one customer accounted for 18% of the Company's gross accounts receivables as of March 31, 2003. Accounts receivables from two customers accounted for 13% and 10%, respectively, of the Company's gross accounts receivables as of March 31, 2002. No other single customer accounted for more than 10% of the Company's gross accounts receivables as of March 31, 2003 and 2002.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**14. Restructuring Charges**

**2001 Restructuring Charge**

In September 2001, the Company recorded a restructuring charge primarily related to the Company's revised European strategy, as well as to exit several U.S. operating leaseholds. The European restructuring activity was largely completed during 2002. The Company continues to work on exiting from one remaining U.S. leasehold. A summary of the movement in the 2001 restructuring charge accrual from December 31, 2002 to March 31, 2003 is outlined as follows (in thousands) (unaudited):

|                       | Accrued<br>restructuring<br>charge as of<br>December 31,<br>2002 | Non-cash<br>charges | Cash<br>payments | Accrued<br>restructuring<br>charge as of<br>March 31,<br>2003 |
|-----------------------|--|---------------------|------------------|---|
| U.S. lease exit costs | \$ 810   | \$ —                | \$ (202)         | \$ 608  |
|                       | <u>\$ 810</u>  | <u>\$ —</u>         | <u>\$ (202)</u>  | <u>\$ 608</u>   |

**2002 Restructuring Charges**

During 2002, the Company recorded restructuring charges to reflect, among other things, the Company's ongoing efforts to exit or amend several unnecessary U.S. IBX expansion and headquarter office space operating leaseholds, to complete the Company's European exit activities and for reductions in workforce of less than 10% in total employee headcount relating primarily to headquarter positions. The Company continues to work on an exit plan for the excess U.S. operating leases and expects to complete the exit of the U.S. operating leases within the next twelve months. Should it take longer to negotiate the exit of the remaining U.S. leases or the lease settlement amounts exceed the amounts estimated by management, the actual U.S. lease exit costs could exceed the amount estimated and additional restructuring charges may be required. The reductions in workforce were substantially completed in January 2003.

The reductions in workforce undertaken in the second and fourth quarters of 2002, which represented a less than 10% reduction in workforce primarily in the Company's headquarter functions, resulted in approximately \$2.8 million of annual savings.

A summary of the movement in the 2002 restructuring charges accrual from December 31, 2002 to March 31, 2003 is outlined as follows (in thousands) (unaudited):

|                             | Accrued<br>restructuring<br>charge as of<br>December 31,<br>2002 | Non-cash<br>charges | Cash<br>payments | Accrued<br>restructuring<br>charge as of<br>March 31,<br>2003 |
|-----------------------------|--|---------------------|------------------|---|
| Additional lease exit costs | \$ 392   | \$ —                | \$ (7)           | \$ 385  |
| Workforce reductions        | 456  | —                   | (456)            | —   |
|                             | <u>\$ 848</u>  | <u>\$ —</u>         | <u>\$ (463)</u>  | <u>\$ 385</u>   |

**Acquired Restructuring Accruals**

As a result of the Combination, the Company acquired several accruals related to restructuring activities from both i-STT and Pihana, which were commenced in 2002, but will not be completed until 2003. As of March 31, 2003, a total of \$3,266,000 remains accrued for these restructuring activities (see Note 2).

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

**15. Recent Accounting Pronouncements**

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS 146"). SFAS 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred. SFAS 146 eliminates the definition and requirement for recognition of exit costs in Emerging Issues Task Force Issue No. 94-3 where a liability for an exit cost was recognized at the date of an entity's commitment to an exit plan. This statement is effective for exit or disposal activities initiated after December 31, 2002. The Company adopted the provisions of SFAS 146 during the first quarter of 2003. The adoption of this statement has not had a material impact on the Company's results of operations, financial position or cash flows.

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 requires a guarantor to recognize a liability for obligations it has undertaken in relation to the issuance of a guarantee in addition to providing additional disclosures on such guarantees. The liability would be recorded at fair value on the date the guarantee is issued. The disclosure requirements of FIN 45 are effective for the interim and annual periods ending after December 15, 2002. The recognition and measurement provisions of FIN 45 are effective after December 31, 2002. As of December 31, 2002, the Company adopted the disclosure requirements of FIN 45. The adoption of this statement has not had a material impact on the Company's results of operations, financial position or cash flows.

In November 2002, the EITF reached a consensus on Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables" ("EITF 00-21"). EITF 00-21 provides guidance on how to account for arrangements that involve the delivery or performance of multiple products, services and/or rights to use assets. The provisions of EITF 00-21 will apply to revenue arrangements entered into in fiscal periods beginning after June 15, 2003. The Company is currently assessing the impact of the adoption of this pronouncement on its consolidated financial statements.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – an Amendment of SFAS No. 123" ("SFAS 148"). SFAS 148 encourages the adoption of the accounting provisions of SFAS 123 and requires additional disclosure, including in interim financial statements, for all companies regardless of whether or not they adopt the accounting provisions of SFAS 123. The interim disclosure requirements are effective for interim periods beginning after December 15, 2002 and have been reflected in this report on Form 10-Q.

In January 2003, the FASB issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51." FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. FIN 46 is effective immediately for all new variable interest entities created or acquired after January 31, 2003. For variable interest entities created or acquired prior to February 1, 2003, the provisions of FIN 46 must be applied for the first interim or annual period beginning after June 15, 2003. The Company is currently assessing the impact of the pronouncement on its consolidated financial statements.

**EQUINIX, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under SFAS No. 133. The new guidance amends SFAS No. 133 for decisions made as part of the Derivatives Implementation Group ("DIG") process that effectively required amendments to SFAS No. 133, and decisions made in connection with other FASB projects dealing with financial instruments and in connection with implementation issues raised in relation to the application of the definition of a derivative and characteristics of a derivative that contains financing components. In addition, it clarifies when a derivative contains a financing component that warrants special reporting in the statement of cash flows. SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003. The Company does not believe the adoption of SFAS No. 149 will have a material impact on its results of operations and consolidated financial statements.

**16. Subsequent Events**

In April 2003, the Company and certain of its subsidiaries, along with STT Communications and its affiliate, entered into a Securities Purchase and Admission Agreement with various entities affiliated with Crosslink Capital ("Crosslink") for a \$10,000,000 investment in the Company by Crosslink in the form of convertible secured notes (the "Crosslink Convertible Secured Notes"), convertible into shares of the Company's common stock, with detachable warrants for the further issuance of 500,000 shares of common stock (the "Crosslink Convertible Secured Note Warrants") (collectively, the "Crosslink Financing"). The Crosslink Convertible Secured Notes will bear non-cash interest at a rate of 10% per annum, commencing on the second anniversary of the closing of the Crosslink Financing, payable semi-annually in arrears on May 1 and November 1, and will have an initial term through November 2007. Interest on the Crosslink Convertible Secured Notes will be payable in kind in the form of additional convertible secured notes having a principal amount equal to the amount of interest then due having terms which are similar to the terms of the Crosslink Convertible Secured Notes (the "Crosslink PIK Notes").

The Crosslink Convertible Secured Notes will share with the Company's Convertible Secured Note issued on December 31, 2002, in connection with the Financing, a second priority security interest in all of the collateral securing the Company's obligations under the Credit Facility, which excludes the i-STT assets and Pihana's Singapore assets that the Company acquired in the Combination (see Note 2). The Crosslink Convertible Secured Notes will be guaranteed by all of the Company's existing subsidiaries and by all of the Company's future domestic subsidiaries.

The Crosslink Convertible Secured Notes will be convertible into shares of the Company's common stock at a price of \$4.00 per underlying share at any time at the option of the holders. The Crosslink PIK Notes will be convertible into shares of the Company's common stock at a price of \$4.84 per underlying share at any time at the option of the holders. Such conversion prices will be adjusted to mitigate or prevent dilution if fundamental changes occur to the Company's common stock, dividends are declared on the Company's common stock or the Company issues, or contracts to issue, shares of the Company's common stock at a price per share below \$4.84 per share. Following the second anniversary of the closing of the Crosslink Financing, 100% of the Crosslink Convertible Secured Notes will automatically convert if:

- the average closing price of the Company's common stock exceeds \$15.66 for thirty consecutive trading days;
- the average daily trading volume of the Company's common stock during that thirty day trading window exceeds 17,188; and
- the Company has not received an election not to convert the Crosslink Convertible Secured Notes within five days of receiving notice from the Company that the closing price and volume requirements discussed above have been met.

**EQUINIX, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

If Crosslink elects not to convert the Crosslink Convertible Secured Notes within such five-day period, the Crosslink Convertible Secured Notes and any Crosslink PIK Notes will no longer be convertible into shares of the Company's common stock. The Company must offer to purchase the Crosslink Convertible Secured Notes and any outstanding Crosslink PIK Notes together with any accrued and unpaid interest if the Company experiences a change of control, as defined. Furthermore, the Company will issue to Crosslink, Change in Control Warrants and Cash Trigger Warrants similar to those issued to STT Communications in connection with the Financing.

The Crosslink Financing, which is subject to stockholder approval because of the convertible nature of the Crosslink Convertible Secured Notes into shares of the Company's common stock, is expected to close in June 2003.

To the extent the Company completes the Crosslink Financing, the Convertible Secured Note issued in connection with the Financing on December 31, 2002, would be adjusted pursuant to anti-dilution provisions contained in the Financing documents. As a result, shares reserved for the conversion of the Convertible Secured Note would increase from 2,785,205 to 3,268,734.



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 "Other Factors Affecting Operating Results" and "Liquidity and Capital Resources" below. All forward-looking statements in this document are based on information available to us as of the date hereof and we assume no obligation to update any such forward-looking statements.*

**Overview**

Equinix designs, builds and operates IBX hubs where Internet businesses place their equipment and their network facilities in order to interconnect with each other to improve Internet performance. Our IBX hubs and Internet exchange services enable network service providers, enterprises, content providers, managed service providers and other Internet infrastructure companies to directly connect with each other for increased performance. As of March 31, 2003, we had IBX hubs totaling an aggregate of more than one million gross square feet in the Washington, D.C., New York, Dallas, Chicago, Los Angeles, Honolulu and Silicon Valley area in the United States and Singapore, Tokyo, Hong Kong and Sydney in the Asia-Pacific region.

*Recent Developments.* In October 2002, we entered into agreements to consummate a series of related acquisition and financing transactions. These transactions closed on December 31, 2002. Under the terms of these agreements, we combined our business with two similar businesses, that of i-STT Pte Ltd ("i-STT") and Pihana Pacific, Inc. ("Pihana"). i-STT's business is based in Singapore, with operations in Singapore and a joint venture in Thailand. Pihana's business is based in Hawaii, with operations in Hawaii; Los Angeles; Hong Kong; Singapore; Tokyo, Japan and Sydney, Australia. In connection with the acquisition of i-STT and Pihana, we issued approximately 3.5 million shares of our common stock and approximately 1.9 million shares of our Series A preferred stock. We refer to this transaction as the "combination". In conjunction with the combination, we issued to i-STT's former parent company, STT Communications Ltd. ("STT Communications"), a \$30.0 million convertible secured note in exchange for cash. We refer to this transaction as the "financing".

In April 2003, Equinix and certain of our subsidiaries and STT Communications entered into agreements with various entities affiliated with Crosslink Capital for a \$10.0 million cash investment in Equinix in the form of additional convertible secured notes. We refer to this proposed transaction as the "Crosslink financing". The Crosslink financing, which is subject to stockholder approval because of the convertible nature of the convertible secured notes into shares of our common stock, is expected to close in June 2003.

As of March 31, 2003, we had \$21.0 million of cash and cash equivalents. We believe that this cash, the anticipated cash flow generated from operations during the second half of 2003 and 2004 and projected cost-savings in connection with the combination, will be sufficient to meet our working capital, debt service and corporate overhead requirements associated with our operations for the next twelve months.

In connection with the combination and financing, we amended the terms of the indenture governing our senior notes and extinguished \$116.8 million of our senior notes in exchange for a combination of 1.9 million shares of our common stock and \$15.2 million of cash. We refer to this transaction as the "senior note exchange". Because we extinguished the debt in the senior note exchange at a significant discount, we recognized a substantial gain on debt extinguishment during the fourth quarter of 2002.

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Furthermore, in conjunction with the combination, financing and senior note exchange, we amended our credit facility, and on December 31, 2002, we completed a 32 for 1 reverse stock split of our common stock in order to comply with Nasdaq initial listing requirements. Unless otherwise noted, all share and per share amounts in this Quarterly Report on Form 10-Q have been adjusted to give effect to the reverse stock split.

*Risks and Uncertainties.* Since inception, we have experienced operating losses and negative cash flow. As of March 31, 2003 we had an accumulated deficit of \$377.2 million and accumulated cash used in operating and construction activities of \$711.4 million. Given our limited operating history, we may not generate sufficient revenue to achieve desired profitability. We therefore believe that we will continue to experience operating losses for the foreseeable future, particularly from our newly-acquired operations in the Asia-Pacific region. See “Other Factors Affecting Operating Results”.

Under the terms of the amended credit facility, we must meet certain financial and non-financial covenants. While these covenants were reset in December 2002 and are consistent with our expected future performance as a combined company, if we do not achieve the intended growth required or are unable to reduce costs to a level to comply with these covenants, we may be required to repay the \$91.5 million currently outstanding under this facility. Since we do not have sufficient cash reserves to pay this if an event of default occurs, we may be required to renegotiate with the debt issuers for forbearance, make other financial arrangements or take other actions in order to pay down the loan. There can be no assurance that such revised covenants will be met, or that we will be able to obtain a forbearance or that replacement financing will be available. In addition, a default in the credit facility will trigger cross-default provisions in our other debt facilities. If the cash flows from operations are not sufficient to support our cash requirements, cost reductions implemented as a result of this could adversely affect the business and our ability to achieve our business objectives.

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

Equinix’s financial statements and accompanying notes are prepared in accordance with generally accepted accounting principles in the United States of America. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, sales and expenses. These estimates and assumptions are affected by management’s application of accounting policies. Critical accounting policies for Equinix include revenue recognition and allowance for doubtful accounts, accounting for income taxes, contingent liabilities, accounting for property and equipment, impairment of long-lived assets and consolidation, which are discussed in more detail under the caption “Critical Accounting Policies and Estimates” in the Company’s 2002 Annual Report on Form 10-K.

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**Results of Operations**

**Three Months Ended March 31, 2003 and 2002**

*Revenues.* Our revenues for the three months ended March 31, 2003 and 2002 were comprised of the following:

|  | Three months ended March 31, |             |                 |             |
|--|------------------------------|-------------|-----------------|-------------|
|  | 2003                         | %           | 2002            | %           |
| <b>Recurring revenues:</b>                     |                              |             |                 |             |
| Pre-combination Equinix recurring revenues     | \$19,319                     | 76%         | \$16,581        | 82%         |
| i-STT/Pihana recurring revenues                | 4,784                        | 19%         | —               | 0%          |
|  | <u>24,103</u>                | <u>95%</u>  | <u>16,581</u>   | <u>82%</u>  |
| <b>Non-recurring revenues:</b>                 |                              |             |                 |             |
| Pre-combination Equinix non-recurring revenues | 976                          | 4%          | 3,577           | 18%         |
| i-STT/Pihana non-recurring revenues            | 356                          | 1%          | —               | 0%          |
|  | <u>1,332</u>                 | <u>5%</u>   | <u>3,577</u>    | <u>18%</u>  |
| <b>Total revenues</b>                          | <u>\$25,435</u>              | <u>100%</u> | <u>\$20,158</u> | <u>100%</u> |

Our revenues for the three months ended March 31, 2003 and 2002 were geographically comprised of the following:

|                       | Three months ended March 31, |             |                  |             |
|-----------------------|------------------------------|-------------|------------------|-------------|
|                       | 2003                         | %           | 2002             | %           |
| U.S. revenues         | \$ 21,280                    | 84%         | \$ 20,158        | 100%        |
| Asia-Pacific revenues | 4,155                        | 16%         | —                | 0%          |
| <b>Total revenues</b> | <u>\$ 25,435</u>             | <u>100%</u> | <u>\$ 20,158</u> | <u>100%</u> |

We recognized revenues of \$25.4 million for the three months ended March 31, 2003, as compared to revenues of \$20.2 million for the three months ended March 31, 2002. Included in revenues for the three months ended March 31, 2003, are the results of the two companies that we acquired on December 31, 2002, i-STT and Pihana, totaling \$5.1 million. Excluding the results of the acquired companies, we recognized revenues of \$20.3 million for the three months ended March 31, 2003, as compared to revenues of \$20.2 million for the three months ended March 31, 2002. We refer to these revenues as “pre-combination Equinix revenues”.

*Pre-Combination Equinix Revenues.* Pre-combination Equinix revenues consisted of recurring revenues of \$19.3 million and \$16.6 million, respectively, for the three months ended March 31, 2003 and 2002, a 17% increase. Recurring revenues consist primarily of colocation services, such as the leasing of cabinet space and power, plus interconnection and managed infrastructure services. The period over period growth in pre-combination recurring revenues was primarily the result of an increase in orders from existing customers and growth in our customer base from 232 customers as of March 31, 2002 to 326 pre-combination Equinix customers as of March 31, 2003. The growth in our customer base was partially offset by a number of our larger customers reducing the size of their contractual commitments to us. We refer to this effort as the “right-sizing” of our larger customer contracts. During the fourth quarter of 2001 and throughout 2002, we proactively worked with certain of our larger customers to right-size their contractual commitments to help them better react to a slowdown in customer demand as a result of weaker economic conditions. Although these right-sizing efforts often result in a reduction in the number of cabinets these customers are obligated to pay for, many of these right-sizing efforts have resulted in the customer extending the term for the remaining cabinets. As a result, although the short-term recurring revenues from such customers are reduced, the overall contract value at times remains intact and the relationship with the customer is preserved, if not improved. As of December 31, 2002, we had successfully completed the right-sizing of most of our customers that had more than 100 cabinets booked, a booking level that represents our larger customers. These right-sizing efforts have, over the past several quarters, been netted out against our new customer cabinet bookings, limiting our overall revenue growth during the past five quarters ended December 31, 2002. We expect our pre-combination Equinix IBX hub recurring revenues to continue to grow and remain our most significant source of revenue for the foreseeable future.

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In addition, pre-combination Equinix revenues consisted of non-recurring revenues of \$976,000 and \$3.6 million, respectively, for the three months ended March 31, 2003 and 2002. Non-recurring revenues are primarily related to the recognized portion of deferred installation revenue, custom service revenues, equipment resale revenue and settlement fees associated with certain contract terminations. The period over period decrease in pre-combination Equinix non-recurring revenues was primarily the result of \$1.5 million in settlement fees received during the three months ended March 31, 2002 as a result of the “right-sizing” efforts discussed above and \$1.6 million of equipment resale revenue in the same period. There were no significant settlement fees received nor any equipment resale transactions during the three months ended March 31, 2003. In February and March 2002, we entered into equipment reseller agreements with two related party companies and sold \$1.6 million of equipment during the three months ended March 31, 2002. Due to the low margins involved in reselling equipment, we are no longer actively pursuing equipment resale transactions, and as a result, we do not anticipate significant equipment resale revenues in the future. Installation and service fees are recognized ratably over the term of the contract. Custom service revenues are recognized upon completion of the services. Settlement fees are recognized upon contract termination. Excluding any settlement fees that we may recognize in the future, we expect our pre-combination Equinix non-recurring revenues to decrease as a percent of our recurring revenues in the foreseeable future.

*i-STT/Pihana Revenues.* As a result of the combination that closed on December 31, 2002, we recognized \$4.2 million of revenues in Asia-Pacific and \$985,000 from the two U.S. IBX hubs that we acquired from Pihana in Los Angeles and Honolulu during the three months ended March 31, 2003. Prior to the combination we generated no revenues from outside of the United States. i-STT/Pihana revenues consisted of recurring revenues of \$4.8 million, primarily from colocation and managed infrastructure services, and non-recurring revenues of \$356,000 for the three months ended March 31, 2003. i-STT/Pihana revenues are generated from Singapore, Tokyo, Hong Kong and Sydney in Asia-Pacific and Los Angeles and Honolulu in the U.S. Our acquired revenues streams are similar to the revenue streams that we generate from our pre-combination Equinix IBX hubs; however, our Singapore IBX hub has additional managed infrastructure service revenue streams, such as mail service and managed platform solutions, which we do not currently offer in any other IBX hub location.

**Cost of Revenues.** Cost of revenues increased to \$30.6 million for the three months ended March 31, 2003 from \$25.4 million for the three months ended March 31, 2002. Included in cost of revenues for the three months ended March 31, 2003 were the cost of revenues of the two companies that we acquired on December 31, 2002, i-STT and Pihana, totaling \$6,171,000. Excluding the cost of revenues of the acquired companies, our cost of revenues were \$24.4 million for the three months ended March 31, 2003 as compared to cost of revenues of \$25.4 million for the three months ended March 31, 2002. We refer to these costs of revenues as “pre-combination Equinix cost of revenues”.

*Pre-Combination Equinix Cost of Revenues.* Pre-combination Equinix cost of revenues included \$12.2 million and \$10.9 million, respectively, of depreciation expense and \$40,000 and \$91,000, respectively, of stock-based compensation expense for the three months ended March 31, 2003 and 2002. In addition to depreciation and stock-based compensation, cost of revenues consists primarily of rental payments for our leased IBX hubs, site employees’ salaries and benefits, utility costs, power and redundancy system engineering support services and related costs and security services, which we refer to as our cash cost of revenues. Furthermore, pre-combination Equinix cash cost of revenues included \$1.5 million of costs associated with equipment resale revenue for the three months ended March 31, 2002, which did not recur in the current period. Excluding depreciation, stock-based compensation and the costs of equipment resales, pre-combination Equinix cash cost of revenues decreased period over period to \$12.2 million for the three months ended March 31, 2003 from \$12.9 million for the three months ended March 31, 2002, a 5% decrease. This decrease is primarily the result of (a) reduced costs associated with the San Jose ground lease of \$1.1 million as a result of the option that we exercised in September 2002 to return approximately one-half of the land commencing in October 2002 and (b) an overall reduction in spending due to cost containment efforts. These savings were partially offset by higher costs associated with our New York metropolitan area IBX hub, which opened during the first quarter of 2002 and did not incur a full quarter of costs during that period. We anticipate that the costs associated with the continued increase in occupancy of our pre-combination Equinix IBX hubs and the additional costs associated with some of our new services, such as bandwidth, will continue to increase our cash cost of revenues in the foreseeable future, although as a percent of revenues, we anticipate a decline in our cash cost of revenues until such time as we reach certain pre-determined levels of profitability. The period over period growth in pre-combination Equinix depreciation expense was primarily the result of a full quarter of depreciation incurred for the three months ended March 31, 2003 for our New York metropolitan area IBX hub, which opened during the first quarter of 2002 resulting in an increase of \$1.3 million.

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*i-STT/Pihana Cost of Revenues.* As a result of the combination that closed on December 31, 2002, we incurred an additional \$6.2 million in cost of revenues from the Asia-Pacific IBX hub operations and the two U.S. IBX hubs in Los Angeles and Honolulu acquired from Pihana during the three months ended March 31, 2003, which is our first quarter of combined results. Included in this number is \$1.4 million of depreciation expense, primarily from Asia-Pacific. Excluding depreciation expense, our acquired cash cost of revenues totaled \$4.8 million for Asia-Pacific and for the two acquired U.S. IBX hubs. Our acquired cash cost of revenues consist of the same type of cash costs that we incur in our pre-combination Equinix IBX hub operations, namely rental payments for our leased IBX hubs, site employees' salaries and benefits, utility costs, power and redundancy system engineering support services and related costs and security services. Our Asia-Pacific cash costs of revenues are generated in Singapore, Tokyo, Hong Kong and Sydney. There are several managed IT infrastructure service revenue streams unique to our Singapore IBX hub, such as mail service and managed platform solutions, that are more labor intensive than our service offerings in the United States. As a result, our Singapore IBX hub has a greater number of employees than any of our other IBX hubs, and therefore, a greater labor cost relative to our other IBX hubs in the United States or other Asia-Pacific locations. We anticipate that our acquired cash cost of revenues will remain relatively flat for the foreseeable future or experience moderate growth in relation to any revenue growth.

*Sales and Marketing.* Sales and marketing expenses increased to \$4.7 million for the three months ended March 31, 2003 from \$4.2 million for the three months ended March 31, 2002. Included in sales and marketing expenses for the three months ended March 31, 2003 were the sales and marketing expenses of the two companies that we acquired on December 31, 2002, i-STT and Pihana, totaling \$1,385,000. Excluding the sales and marketing expenses of the acquired companies, our sales and marketing expenses were \$3.3 million for the three months ended March 31, 2003 as compared to \$4.2 million for the three months ended March 31, 2002. We refer to these sales and marketing expenses as "pre-combination Equinix sales and marketing expenses".

*Pre-Combination Equinix Sales and Marketing Expenses.* Included in pre-combination Equinix sales and marketing expenses were \$113,000 and \$433,000, respectively, of stock-based compensation expense for the three months ended March 31, 2003 and 2002. Excluding stock-based compensation expense, pre-combination Equinix cash sales and marketing expenses decreased to \$3.2 million from \$3.7 million, a 14% decrease. Cash sales and marketing expenses consist primarily of compensation and related costs for sales and marketing personnel, sales commissions, marketing programs, public relations, promotional materials and travel. The period over period decrease in pre-combination Equinix cash sales and marketing expenses is the result of an overall reduction in spending due to cost containment efforts, primarily reduced marketing program spending. We continue to closely monitor our spending in all areas of the Company as a result of the current market conditions. We expect to see a moderate increase in sales and marketing spending in the future, although as a percent of revenues, we anticipate a decline in sales and marketing spending until such time as we reach certain pre-determined levels of profitability.

*i-STT/Pihana Sales and Marketing Expenses.* As a result of the combination that closed on December 31, 2002, we incurred an additional \$1.4 million of sales and marketing expenses, comprised of \$860,000 in cash sales and marketing expenses from our Asia-Pacific operations during the three months ended March 31, 2003, and \$525,000 of amortization expense. Our Asia-Pacific sales and marketing expenses consist of the same type of cash costs that we incur in our U.S. operations, namely compensation and related costs for sales and marketing personnel, sales commissions, marketing programs, public relations, promotional materials and travel. Our Asia-Pacific sales and marketing expenses are generated in Singapore, Tokyo, Hong Kong and Sydney. We expect that our Asia-Pacific cash sales and marketing expenses will increase moderately in the foreseeable future. As a result of the combination that closed on December 31, 2002, we acquired several intangible assets that we amortize, namely the use of a tradename and certain customer contracts in Singapore valued at \$300,000 and \$3.6 million, respectively. The tradename intangible asset is being amortized over one year and the customer contract intangible asset is being amortized over two years. As a result, we incurred a total of \$525,000 of amortization expense during the three months ended March 31, 2003.

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**General and Administrative.** General and administrative expenses increased to \$10.9 million for the three months ended March 31, 2003 from \$6.7 million for the three months ended March 31, 2002. Included in general and administrative expenses for the three months ended March 31, 2003 were the general and administrative expenses of the two companies that we acquired on December 31, 2002, i-STT and Pihana, totaling \$3,521,000. Excluding the general and administrative expenses of the acquired companies, our general and administrative expenses were \$7.4 million for the three months ended March 31, 2003 as compared to \$6.7 million for the three months ended March 31, 2002. We refer to these general and administrative expenses as “pre-combination Equinix general and administrative expenses”.

**Pre-Combination Equinix General and Administrative Expenses.** Included in pre-combination Equinix general and administrative expenses were \$2.5 million and \$1.1 million, respectively, of depreciation expense and \$805,000 and \$2.1 million, respectively, of stock-based compensation expense for the three months ended March 31, 2003 and 2002. Excluding depreciation and stock-based compensation expense, pre-combination Equinix cash general and administrative expenses increased to \$4.1 million from \$3.6 million, a 14% increase. Cash general and administrative expenses consist primarily of salaries and related expenses, accounting, legal and administrative expenses, professional service fees and other general corporate expenses such as our corporate headquarter office lease. Pre-combination Equinix cash general and administrative expenses for the three months ended March 31, 2002, included the elimination of a corporate bonus program, which resulted in savings during the first quarter of 2002 of \$990,000. Excluding the effects of this particular item, pre-combination Equinix cash general and administrative expenses decreased period over period by \$491,000 or 11%. This period over period decrease in pre-combination Equinix cash general and administrative expenses is the result of an overall reduction in spending due to cost containment efforts, including some staff reductions and reduced corporate discretionary spending. We continue to closely monitor our spending in all areas of the Company as a result of the current market conditions. Commencing in the second quarter of 2003, we expect our pre-combination Equinix cash general and administrative expenses to decrease as a result of cost savings associated primarily with the relocation of the corporate headquarters to Foster City, California. In addition, as a percent of revenues, we anticipate a decline in pre-combination Equinix cash general and administrative spending until such time as we reach certain pre-determined levels of profitability. The period over period growth in pre-combination Equinix depreciation expense was the result of the termination of our previous headquarter lease arrangement in Mountain View, California, in March 2003, resulting in accelerated depreciation during the current period on the related leasehold improvements attributed to this location.

**i-STT/Pihana General and Administrative Expenses.** As a result of the combination that closed on December 31, 2002, we incurred an additional \$3.5 million in general and administrative expenses, comprised of \$2.6 million from our newly-acquired Asia-Pacific operations and \$947,000 of costs associated with a corporate headquarter office acquired from Pihana on December 31, 2002 located in Honolulu. Our Asia-Pacific general and administrative expenses, which included \$156,000 of depreciation expense, consist of the same type of costs that we incur in our U.S. operations, namely salaries and related expenses, accounting, legal and administrative expenses, professional service fees and other general corporate expenses. Our Asia-Pacific general and administrative expenses are generated in Singapore, Tokyo, Hong Kong and Sydney. Our Asia-Pacific headquarter office is located in Singapore. Most of the corporate overhead support functions that we have in the U.S. also reside in our Singapore office in order to support our Asia-Pacific operations. In addition, we have separate corporate office locations in Tokyo and Hong Kong. We expect that our Asia-Pacific general and administrative expenses will remain relatively flat or experience only moderate growth for the foreseeable future. The acquired general and administrative costs in Honolulu, which totaled \$947,000, should end during the third quarter of 2003 as we complete the rationalization of the Pihana office during the second quarter of 2003.

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**Interest Income.** Interest income decreased to \$70,000 from \$493,000 for the three months ended March 31, 2003 and 2002, respectively. Interest income decreased due to lower cash, cash equivalent and short-term investment balances held in interest-bearing accounts and lower interest rates received on those invested balances.

**Interest Expense.** Interest expense decreased to \$4.8 million from \$9.7 million for the three months ended March 31, 2003 and 2002, respectively. The significant decrease in interest expense was primarily attributable to the retirement of \$169.5 million of our 13% senior notes during 2002. In addition, we reduced the interest expense attributed to our credit facility due to a reduction in the principal balance outstanding and a reduction in the interest rates. However, these interest expense savings were partially offset by the approximately \$1.1 million of non-cash interest expense attributed to the \$30.0 million 14% convertible secured note issued on December 31, 2002 as a result of the financing.

**Gain on Debt Extinguishment.** In February and March 2002, we retired \$25.0 million of our 13% senior notes in exchange for approximately 292,000 shares of our common stock. As a result of these transactions, we recognized an \$11.7 million net gain on debt extinguishment, after deducting transaction costs, interest waived and allocation of unamortized debt issuance costs and debt discount. We extinguished no debt during the quarter ended March 31, 2003.

### **Liquidity and Capital Resources**

Since inception, we have financed our operations and capital requirements primarily through the issuance of senior notes, the private sale of preferred stock, our initial public offering, our credit facility, which was later amended, our convertible secured note, our combination with i-STT and Pihana and various types of debt facilities and capital lease obligations, for aggregate gross proceeds of approximately \$909.2 million. As of March 31, 2003, our total indebtedness from our senior notes, credit facility and other debt facilities and capital lease obligations was \$159.1 million, including our \$30.0 million convertible secured note issued in December 2002.

As of March 31, 2003, our principal source of liquidity was approximately \$21.0 million in cash and cash equivalents. In April 2003, we and certain of our subsidiaries and STT Communications entered into agreements with various entities affiliated with Crosslink Capital for a \$10.0 million cash investment in us in the form of additional convertible secured notes. We refer to this proposed transaction as the "Crosslink financing". The Crosslink financing, which is subject to stockholder approval because of the convertible nature of the convertible secured notes into shares of our common stock, is expected to close in June 2003.

### **Uses of Cash**

Net cash used in our operating activities was \$19.6 million and \$2.0 million for the three months ended March 31, 2003 and 2002. We used cash primarily to fund our net loss, including cash interest payments on senior notes and our credit facility. In addition, we paid approximately \$14.3 million of accrued restructuring charges, accrued merger and financing costs and aged payables, which significantly impacted the cash used in our operating activities for the three months ended March 31, 2003.

Net cash provided by investing activities for the three months ended March 31, 2003 was \$1.6 million. Net cash used in investing activities was \$21.6 million for the three months ended March 31, 2002. Net cash provided by investing activities during the three months ended March 31, 2003 was primarily the result of the release of restricted cash to fund a cash interest payment on our senior notes in January 2003, offset by a nominal amount of capital expenditures. Net cash used in investing activities for the three months ended March 31, 2002 was primarily attributable to the liquidation of accrued construction costs for the New York metropolitan area IBX hub, which opened during the first quarter of 2002. The amount of cash used in investing activities has decreased substantially as we have now completed our current IBX hub rollout plan.

Net cash used in financing activities was \$2.4 million and \$1.4 million for the three months ended March 31, 2003 and 2002, respectively. Cash used in financing activities for both periods was primarily attributable to the scheduled monthly payments of our debt facilities and capital lease obligations. In addition, in January 2003, as part of our settlement agreement with Wells Fargo, we permanently repaid the \$1.6 million in principal remaining on our Wells Fargo loan.

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### **Debt Obligations**

As of March 31, 2003, our total indebtedness from our senior notes, credit facility, convertible secured note and debt facilities and capital lease obligations was \$159.1 million, as follows:

*Senior Notes.* In December 1999, we issued \$200.0 million aggregate principal amount of 13% senior notes due 2007. During 2002, we retired \$169.5 million of the senior notes in exchange for approximately 2.4 million shares of common stock and approximately \$21.3 million of cash. As of March 31, 2003, a total of \$30.5 million of senior note principal remains outstanding.

*Credit Facility.* In December 2000, we entered into the credit facility with a syndicate of lenders under which, subject to our compliance with a number of financial ratios and covenants, we were permitted to borrow up to \$150.0 million. This facility was amended at various times during 2001 and 2002 and in connection with the combination, financing and completed senior note exchange, we entered into a further amendment to the credit facility. The most significant terms and conditions of this amendment were:

- we were granted a full waiver of previous covenant breaches and were granted consent to use cash to retire our senior notes in connection with the senior note exchange;
- future revenue and EBITDA covenants were eliminated and the remaining covenants and ratios were reset consistent with expected future performance of the combined company for the remaining term of the loan;
- we permanently repaid \$8.5 million of the then currently outstanding \$100.0 million balance, bringing our total amount owed under this facility to \$91.5 million as of December 31, 2002; and
- the amortization schedule for the credit facility was amended such that the minimum amortization due in 2003-2004 was significantly reduced.

As of March 31, 2003, a total of \$91.5 million of credit facility principal remains outstanding.

*Convertible Secured Note.* In December 2002, in conjunction with the combination, STT Communications made a \$30.0 million strategic investment in the company in the form of a 14% convertible secured note with an initial term of five years. The interest on the convertible secured note is payable in kind in the form of additional convertible secured notes.

*Other Debt Facilities and Capital Lease Obligations.* In May 1999, we entered into a master lease agreement with Comdisco in the amount of \$1.0 million. This master lease agreement was increased by addendum in August 1999 by \$5.0 million. This agreement bears interest at either 7.5% or 8.5% and is repayable over 42 months in equal monthly payments with a final interest payment equal to 15% of the advance amounts due on maturity. As of March 31, 2003, these capital lease financings were fully drawn and \$1.4 million remained outstanding.

In August 1999, we entered into a loan agreement with Venture Lending and Leasing in the amount of \$10.0 million and fully drew down on this amount. This loan agreement bears interest at 8.5% and was repayable over 42 months in equal monthly payments with a final interest payment equal to 15% of the advance amounts due on maturity. In October 2002, we amended the loan agreement to secure certain short-term cash deferral benefits. Under the terms of this amendment, we extended the maturity of the loan by 24 months and amortized the remaining principal balance and related balloon interest payment over this amended period ending March 1, 2005. In exchange, the Company issued new warrants and re-priced the original warrants. As of March 31, 2003, principal of \$1.2 million remained outstanding.

In March 2001, we entered into a loan agreement with Wells Fargo in the amount of \$3.0 million and fully drew down on this amount. This loan agreement bears interest at 13.15% and is repayable over 36 months. As of June 30, 2002, we were not in compliance with one of the requirements of this loan. As a result, we reflected the full amount outstanding under this facility totaling \$1.6 million as a current obligation on the accompanying balance sheet as of December 31, 2002. In January 2003, we reached an agreement with Wells Fargo and made a payment to Wells Fargo of approximately \$1.7 million in full satisfaction of all amounts owed to Wells Fargo under the loan agreement.



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In June 2001, we entered into a loan agreement with Heller Financial Leasing in the amount of \$5.0 million and fully drew down on this amount. This loan agreement bears interest at 13.0% and is repayable over 36 months. In August 2002, we amended this loan to secure certain short-term cash deferment. Under the amended terms of this loan agreement, we extended the maturity of the loan by nine months. Commencing September 2002, we began to benefit from the reduction in monthly payments over the following 14 months thereby deferring approximately \$1.2 million of principal payments. Commencing November 2003, the deferred principal payments will be repaid over the remaining 17 months of the loan ending March 2005. As of March 31, 2003, principal of \$3.2 million remained outstanding.

In December 2002, in conjunction with our merger with Pihana, we acquired multiple capital leases with Orix. The original amount financed was approximately \$3.5 million. These capital lease arrangements bear interest at an average rate of 6.4% per annum and are repayable over 30 months. As of March 31, 2003, principal of \$1.3 million remained outstanding.

### **Debt Maturities and Operating Lease Commitments**

We lease our IBX hubs and certain equipment under non-cancelable operating lease agreements expiring through 2020. The following represents the minimum future operating lease payments for these commitments, as well as the combined aggregate maturities for all of our debt as of March 31, 2003 (unaudited) (in thousands):

|                     | <u>Debt facilities &amp;<br/>capital lease<br/>obligations</u> | <u>Credit facility</u> | <u>Senior<br/>notes</u> | <u>Convertible<br/>secured note</u> | <u>Operating<br/>leases</u> | <u>Total</u>      |
|---------------------|--|------------------------|-------------------------|-------------------------------------|-----------------------------|-------------------|
| 2003                | \$ 3,334   | \$ 1,981               | \$ —                    | \$ —                                | \$ 16,293                   | \$ 21,608         |
| 2004                | 3,019  | 6,981                  | —                       | —                                   | 24,212                      | 34,212            |
| 2005                | 729  | 82,548                 | —                       | —                                   | 27,232                      | 110,509           |
| 2006                | —  | —                      | —                       | —                                   | 28,309                      | 28,309            |
| 2007                | —  | —                      | 30,475                  | 30,000                              | 29,203                      | 89,678            |
| 2008 and thereafter | —  | —                      | —                       | —                                   | 207,311                     | 207,311           |
|                     | <u>\$ 7,082</u>  | <u>\$ 91,510</u>       | <u>\$ 30,475</u>        | <u>\$ 30,000</u>                    | <u>\$ 332,560</u>           | <u>\$ 491,627</u> |

We believe that our cash on hand, the anticipated cash flow generated from operations during the second half of 2003 and 2004 and projected cost-savings in connection with the combination, will be sufficient to meet our working capital, debt service and corporate overhead requirements associated with our operations for the next twelve months.

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### **Recent Accounting Pronouncements**

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("SFAS 146"). SFAS 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred. SFAS 146 eliminates the definition and requirement for recognition of exit costs in Emerging Issues Task Force Issue No. 94-3 where a liability for an exit cost was recognized at the date of an entity's commitment to an exit plan. This statement is effective for exit or disposal activities initiated after December 31, 2002. The Company adopted the provisions of SFAS 146 during the first quarter of 2003. The adoption of SFAS 146 has not had a material impact on our results of operations, financial position or cash flows.

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 requires a guarantor to recognize a liability for obligations it has undertaken in relation to the issuance of a guarantee in addition to providing additional disclosures on such guarantees. The liability would be recorded at fair value on the date the guarantee is issued. The disclosure requirements of FIN 45 are effective for the interim and annual periods ending after December 15, 2002. The recognition and measurement provisions of FIN 45 are effective after December 31, 2002. As of December 31, 2002, the Company adopted the disclosure requirements of FIN 45. The adoption of FIN 45 has not had a material impact on our results of operations, financial position or cash flows.

In November 2002, the Emerging Issues Task Force reached a consensus on Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables" ("EITF 00-21"). EITF 00-21 provides guidance on how to account for arrangements that involve the delivery or performance of multiple products, services and/or rights to use assets. The provisions of EITF 00-21 will apply to revenue arrangements entered into in fiscal periods beginning after June 15, 2003. We are currently assessing the impact of the adoption of this pronouncement on our consolidated financial statements.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – an Amendment of SFAS No. 123" ("SFAS 148"). SFAS 148 encourages the adoption of the accounting provisions of SFAS 123 and requires additional disclosure, including in interim financial statements, for all companies regardless of whether or not they adopt the accounting provisions of SFAS 123. The interim disclosure requirements are effective for interim periods beginning after December 15, 2002 and have been reflected in this report on Form 10-Q.

In January 2003, the FASB issued FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51." FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. FIN 46 is effective immediately for all new variable interest entities created or acquired after January 31, 2003. For variable interest entities created or acquired prior to February 1, 2003, the provisions of FIN 46 must be applied for the first interim or annual period beginning after June 15, 2003. We are currently assessing the impact of the pronouncement on our consolidated financial statements.

In April 2003, the FASB issued SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS No. 149 amends and clarifies accounting for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities under SFAS No. 133. The new guidance amends SFAS No. 133 for decisions made as part of the Derivatives Implementation Group ("DIG") process that effectively required amendments to SFAS No. 133, and decisions made in connection with other FASB projects dealing with financial instruments and in connection with implementation issues raised in relation to the application of the definition of a derivative and characteristics of a derivative that contains financing components. In addition, it clarifies when a derivative contains a financing component that warrants special reporting in the statement of cash flows. SFAS No. 149 is effective for contracts entered into or modified after June 30, 2003 and for hedging relationships designated after June 30, 2003. We do not believe the adoption of SFAS No. 149 will have a material impact on our results of operations and consolidated financial statements.

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### **Other Factors Affecting Operating Results**

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

### **Risks Related to Our Business**

#### **Equinix, i-STT and Pihana have limited operating histories and the market for each company's services is still in its early stages.**

We were founded in June 1998 and did not recognize any revenue until November 1999. i-STT was founded in January 2000 and did not recognize any revenue until May 2000. Pihana was founded in June 1999 and did not recognize any revenue until June 2000. We expect that we will encounter challenges and difficulties frequently experienced by early-stage companies in new and rapidly evolving international markets, such as our ability to generate cash flow, hire, train and retain sufficient operational and technical talent, and implement our plan with minimal delays. We may not successfully address any or all of these challenges and our failure to do so would seriously harm our business plan and operating results, and affect our ability to raise additional funds.

If we are unable to meet these challenges and generate higher revenues while reducing costs, we may not be able to comply with the covenants in the credit facility. If we breach our credit facility, the banks could require repayment of all amounts previously drawn down and we will not have sufficient cash reserves to repay such amounts.

#### **Equinix, i-STT and Pihana have each incurred substantial losses in the past, may continue to incur additional losses in the future and will not be profitable until the combined company reverses this trend.**

Equinix incurred losses of approximately \$21.6 million for 2002 (\$135.8 million, excluding the gain on debt extinguishment), i-STT incurred losses of approximately \$8.0 million for 2002 and Pihana incurred losses of approximately \$148.5 million for the same period. For the three months ended March 31, 2003, the combined company incurred additional losses of \$25.6 million. In recent periods, Equinix, i-STT and Pihana have not generated cash from operations. Even if the combined company achieves profitability, given the competitive and evolving nature of the industry in which it operates, the combined company may not be able to sustain or increase profitability on a quarterly or annual basis.

The combination will delay, and may prevent, our profitability as a result of factors including:

- significant operating losses and lower gross margins generated by Pihana's IBX hubs;
- costs associated with integrating the three businesses; and
- fees and costs associated with completing these transactions, including professional fees.

As a result of these increased expenses, the combined company will need to increase revenues in order to reach profitability. If we are unable to sufficiently grow revenues while reducing costs, we may not be able to comply with the covenants in our credit facility. If we breach the credit facility, the banks could require repayment of all amounts previously drawn down and we do not have sufficient cash reserves to repay such amounts.

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### **We expect our operating results to fluctuate.**

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

- changes in general economic conditions and specific market conditions in the telecommunications and Internet industries;
- growth or decline of Internet use;
- customer insolvency;
- the ability of our customers to obtain financing or to fund their capital expenditures;
- demand for space and services at our IBX hubs;
- our pricing policies and the pricing policies of our competitors;
- the timing of customer installations and related payments;
- customer retention and satisfaction;
- the provision of customer discounts and credits;
- the mix of current and proposed products and services and the gross margins associated with our products and services;
- competition in the markets;
- conditions related to international operations;
- the timing and magnitude of capital expenditures and expenses related to the expansion of sales, marketing, operations and acquisitions, if any, of complementary businesses and assets;
- the cost and availability of adequate public utilities, including power;
- ability to obtain, transfer, or maintain licenses required by governmental entities with respect to the combined business; and
- compliance with governmental regulation with which we have little experience.
- the effects of terrorist activity and armed conflict, such as disruptions in general economic activity, changes in logistics and security arrangements, and reduced customer demand for our services;

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 Equinix, i-STT and Pihana have experienced growth in revenues in recent quarters, this growth rate is not necessarily indicative of future operating results. It is possible that the combined company may never achieve profitability on a quarterly or annual basis. 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 the combined company's future performance. In addition, our operating results in one or more future quarters may fail to meet the expectations of securities analysts or investors. If this occurs, we could experience an immediate and significant decline in the trading price of its stock.

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If we cannot generate higher revenues, while reducing costs by combining the businesses, we may not be able to comply with the covenants in the credit facility. If the combined company breaches the credit facility, the banks could require repayment of all amounts previously drawn and the combined company will not have sufficient cash reserves to repay such amounts.

**If we cannot successfully integrate Pihana's and i-STT's respective existing business operations, we may not achieve the anticipated benefits of the combination.**

Integrating i-STT and Pihana into our business operations involves a number of risks, including:

- the difficulties and expenses in combining the operations, technology and computer systems and software applications of the three companies;
- the different geographic locations of the principal operations of us, i-STT and Pihana;
- the difficulties in integrating the companies' key revenue-generating services in a way that would be accepted in the market;
- the difficulties in the creation and maintenance of uniform standards, controls, procedures and policies;
- the diversion of management's attention from ongoing operations;
- the challenges in keeping and attracting customers; and
- the introduction of new or enhanced services.

If we are to realize the anticipated benefits of the combination, our operations must be efficiently and effectively integrated with the operation of i-STT and Pihana. There can be no assurance that the integration will be successful or that the anticipated benefits of the combination will be realized. If we cannot generate higher revenues, while reducing costs, we may not be able to comply with the covenants in our credit facility. If we breach the credit facility, the banks could require repayment of all amounts previously drawn down and we do not have sufficient cash reserves to repay such amounts.

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

In 2002, our sales outside North America represented less than 1% of our revenues, i-STT's sales outside North America represented approximately 100% of its revenues and Pihana's sales outside North America represented approximately 45% of its revenues. For the three months ended March 31, 2003, the combined company recognized 16% of its revenues outside North America. We anticipate that, for the foreseeable future, approximately 15% to 20% of the combined company's revenues will be derived from sources outside North America. Our management team is comprised primarily of Equinix executives before the combination, some of whom have had limited or no experience overseeing international operations.

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

We may experience gains and losses resulting from fluctuations in foreign currency exchange rates, for which hedging activities may not adequately protect us. Where our prices are denominated in U.S. dollars, our sales could be adversely affected by declines in foreign currencies relative to the U.S. dollar, thereby making our products more expensive in local currencies. Our international operations are generally subject to a number of additional risks, including:

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

To date, the majority of Equinix's revenues and costs have been denominated in U.S. dollars; the majority of i-STT's revenues and costs have been denominated in Singapore dollars and the majority of Pihana's revenues and costs have been denominated in U.S. dollars, Japanese yen and Australian, Hong Kong and Singapore dollars. However, we expect that in the future an increasing portion of revenues and costs will be denominated in foreign currencies. Although the combined company may undertake foreign exchange hedging transactions to reduce foreign currency transaction exposure, it does not currently intend to eliminate all foreign currency transaction exposure.

### **STT Communications holds a substantial portion of our stock and has significant influence over matters requiring stockholder consent.**

STT Communications currently owns approximately 28% of our outstanding voting stock. Because of the diffuse ownership of our stock, STT Communications has significant influence over matters requiring our stockholder approval. Following the expiration of restrictions on STT Communications preventing it from converting its convertible secured notes and warrants into voting stock if, as a result, STT Communications will own more than 40% of our voting stock, STT Communications will effectively control the company and the election of directors to our board of directors. Consequently, STT Communications will be able to exercise significant control over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, which could prevent or delay a third party from acquiring or merging with us.

### **We need to improve and implement financial and managerial controls and improve our reporting systems and procedures. If we are unable to do so successfully, we may not be able to manage growth effectively and our operating results would be harmed.**

In order to manage the integration of the i-STT and Pihana businesses, we need to continue to improve our financial and managerial controls and reporting systems and procedures. Any inability of our management to integrate additional companies, employees, technology advances and customer service into operations and to eliminate unnecessary duplication may have a materially adverse effect on our business, financial condition and results of operations.

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

We agreed to a covenant in the combination agreement (which we refer to as the FIRPTA covenant) that we would use all commercially reasonable efforts to ensure that at all times from and after the closing of the combination until such time as neither STT Communications nor its affiliates hold our capital stock or debt securities (or the capital stock received upon conversion of the debt securities) received by STT Communications in connection with the consummation of the transactions contemplated in the combination agreement, none of our capital stock issued to STT Communications constitute "United States

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real property interests” within the meaning of Section 897(c) of the Internal Revenue Code of 1986, which we call the Code. Under Section 897(c) of the Code, our capital stock issued to STT Communications would generally constitute “United States real property interests” at such point in time that the fair market value of the “United States real property interests” owned by us equals or exceeds 50% of the sum of the aggregate fair market values of (a) our “United States real property interests,” (b) our interests in real property located outside the U.S., and (c) any other assets held by us which are used or held for use in our trade or business. Given that we currently own significant amounts of “United States real property interests,” we may be limited with respect to the business opportunities we may pursue, particularly if the business opportunities would increase the amounts of “United States real property interests” owned by us or decrease the amount of other assets owned by us. In addition, pursuant to the FIRPTA covenant we may be forced to take commercially reasonable proactive steps to ensure our compliance with the FIRPTA covenant, including, but not limited to, (a) a sale-leaseback transaction with respect to all real property interests, or (b) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all of our outstanding stock (this reorganization would require the submission of that transaction to our stockholders for their approval and the consummation of that exchange).

### **Our non-U.S. customers include numerous related parties of i-STT.**

In the past, a substantial portion of i-STT’s financing, as well as its revenues, has been derived from its affiliates. We continue to have contractual and other business relationships and may engage in material transactions with affiliates of STT Communications. Circumstances may arise in which the interests of STT Communications’ affiliates may conflict with the interests of our other stockholders. In addition, Singapore Technologies Pte Ltd, an affiliate of STT Communications, makes investments in various companies; it has invested in the past, and may invest in the future, in entities that compete with us. In the context of negotiating commercial arrangements with affiliates, conflicts of interest have arisen in the past and may arise, in this or other contexts, in the future. There can be no assurance that any conflicts of interest will be resolved in our favor.

### **Our success is dependent on the retention of our executive officers and key employees.**

We are substantially dependent upon the continued service of our executive officers. In addition, we are dependent on the retention of key employees of Pihana and i-STT who have knowledge of the applicable local business environment and data center operations. Without these individuals as part of the management team, it would be significantly more difficult to efficiently and effectively integrate our critical functions and compete effectively against other Internet infrastructure companies.

### **We have significant debt and we may not generate sufficient cash flow to meet our debt service obligations.**

Our total debt consists primarily of the following:

- a total of \$30.5 million principal amount of senior notes;
- a total of \$91.5 million principal amount of loans under our credit facility;
- a total of \$30.0 million of a newly issued convertible secured note; and
- approximately \$7.1 million of other outstanding debt facilities and capital lease obligations.

Under the terms of the combination agreement, we are contractually obligated to use our reasonable best efforts to obtain the release of STT Communications from a bank guarantee associated with i-STT’s unconsolidated Thailand joint venture. Such efforts may include i-STT assuming such guarantee if it is commercially reasonable to do so. This guarantee is for 60% of a Thai baht 260,000,000 bank loan (approximately \$6,058,000 as translated using effective exchange rates at March 31, 2003), of which Thai baht 58,300,000 is currently outstanding as of March 31, 2003 (approximately \$1,358,000 as translated using effective exchange rates at March 31, 2003). Currently, neither the Company nor i-STT have assumed any portion of this guarantee.

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The amount of our debt could have important consequences, including:

- impairing our ability to obtain additional financing for working capital, capital expenditures, acquisitions or general corporate purposes;
- requiring us to dedicate a substantial portion of our operating cash flow to paying principal and interest on indebtedness, thereby reducing the funds available for operations;
- limiting our ability to grow and make capital expenditures due to the financial covenants contained in our debt arrangements;
- impairing our ability to adjust rapidly to changing market conditions, invest in new or developing technologies, or take advantage of significant business opportunities that may arise; and
- making us more vulnerable if a general economic downturn continues or if its businesses experience difficulties.

If we cannot generate sufficient additional revenue and recognize sufficient synergy savings by combining the businesses, we may not be able to meet our debt service obligations or repay our debt when due or comply with other covenants in the credit facility. If we breach the credit facility, the banks could require repayment of all amounts previously drawn down, and we do not have sufficient cash reserves to repay such amounts.

### **We may be unable to raise the funds necessary to repay or refinance our indebtedness.**

We are obligated to make principal and/or interest payments on our credit facility each year until up to 2006 and on our senior notes each year until 2007. Additionally, our credit facility matures in 2006 and the convertible secured notes and our senior notes mature in 2007. Each of these obligations require significant amounts of liquidity. We may need additional capital to fund those obligations. Our ability to arrange financing and the cost of this financing will depend upon many factors, including:

- general economic and capital markets conditions generally, and in particular the non-investment grade debt market;
- conditions in the Internet infrastructure market;
- credit availability from banks or other lenders;
- investor confidence in the telecommunications industry generally and our company specifically;
- the success of our IBX hubs; and
- provisions of tax and securities laws that are conducive to raising capital.

If we need additional funds, our inability to raise them will have an adverse effect on our operations. If we decide to raise additional funds by incurring debt, we may become subject to additional or more restrictive financial covenants and ratios.

### **We are subject to restrictive covenants under the credit facility that limit our flexibility in managing our business.**

Our credit facility requires that the combined company maintain specific financial ratios and comply with covenants, including a monthly cash covenant, and contains numerous restrictions on our ability to incur debt, pay dividends or make other restricted payments, sell assets, enter into affiliate transactions and take other actions. Furthermore, our existing financial arrangements are, and future financing arrangements are likely to be, secured by substantially all of our assets. If we are unable to meet the terms of the financial covenants or if we breach any of these covenants, a default could result under one or more of these agreements. A default, if not waived by our lenders, could result in the acceleration of outstanding indebtedness and cause our debt to become immediately due and payable. If an acceleration occurs, we will not be able to repay our debt, and it is unlikely that we will be able to borrow sufficient additional funds to refinance our debt. Even if new financing is made available to us, it may not be available on terms acceptable to us.



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**A significant number of shares of our capital stock issued in connection with the combination, the financing and the senior note exchange may be sold in the market in the near future. This could cause the market price of our common stock to drop significantly, even if our business is doing well.**

We issued a large number of shares of our capital stock to the former Pihana stockholders, STT Communications, and holders of our senior notes in connection with the combination, financing and senior note exchange. The shares of common stock issued in the senior note exchange may be sold into the public market immediately following the closing of the exchange. The shares of common stock issued in connection with the combination will be registered for resale within six months. Subject to the restrictions described in this proxy statement, the senior notes and warrants issued in connection with the financing are immediately convertible or exercisable into shares of common stock and the underlying shares of common stock may be registered for resale within six months of the closing. Sales of a substantial number of shares of our common stock by these parties within any narrow period of time could cause our stock price to fall. In addition, the issuance of the additional shares of our common stock as a result of these transactions will reduce our earnings per share, if any. This dilution could reduce the market price of our common stock unless and until we achieve revenue growth or cost savings and other business economies sufficient to offset the effect of this issuance. There can be no assurance that we will achieve revenue growth, cost savings or other business economies.

**Our profitability is affected by the average selling price of our services and our operations efficiency rates.**

Decreases in the average selling prices of our, i-STT's, and Pihana's services have had and will continue to have a material adverse effect on our profitability. Historically, the average per square foot selling price of our, i-STT's and Pihana's services have declined since the commencement of their respective operations. Our ability to achieve profitability will continue to be dependent, in large part, upon our ability to offset any decreases in average per square foot selling prices by improving operations efficiency, and increasing the value added services provided at our IBX hubs. If we are unable to do so, our business, financial condition and results of operations could be materially adversely affected.

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

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

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

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

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Because of their greater financial resources, some of these companies have the ability to adopt aggressive pricing policies. As a result, in the future, we may suffer from pricing pressure that would adversely affect our ability to generate revenues and adversely affect our operating results. In addition, these competitors could offer colocation on neutral terms, and may start doing so in the same metropolitan areas where we have IBX hubs. Some of these competitors may also provide our target customers with additional benefits, including bundled communication services, and may do so in a manner that is more attractive to our potential customers than obtaining space in our IBX hubs. We believe our neutrality provides us with an advantage over these competitors. However, if these competitors were able to adopt aggressive pricing policies together with offering colocation space, our ability to generate revenues would be materially adversely affected.

We may also face competition from persons seeking to replicate our IBX concept. Competitors may operate more successfully or form alliances to acquire significant market share. Furthermore, enterprises that have already invested substantial resources in peering arrangements may be reluctant or slow to adopt our approach that may replace, limit or compete with their existing systems. In addition, other companies may be able to attract the same potential customers that we are targeting. Once customers are located in competitors' facilities, it will be extremely difficult to convince them to relocate to our IBX hubs.

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

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

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

A customer's decision to license cabinet space in the IBX hubs and to purchase additional services typically involves a significant commitment of resources and will be influenced by, among other things, the customer's confidence in our financial strength. In addition, some customers will be reluctant to commit to locating in our IBX hubs until they are confident that the IBX hub has adequate carrier connections. As a result, we have a long sales cycle. Delays due to the length our sales cycle may materially adversely affect our business, financial condition and results of operations.

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

The presence of diverse telecommunications carriers' fiber networks to our IBX hubs is critical to our ability to attract new customers. We believe that the availability of carrier capacity will directly affect our ability to achieve our projected results.

We are not a telecommunications carrier, and as such we rely on third parties to provide our customers with carrier services. We rely primarily on revenue opportunities from their customers to encourage carriers to invest the capital and operating resources required to build facilities from their locations to our IBX hubs. Carriers will likely evaluate the revenue opportunity of an IBX hub based on the assumption that the environment will be highly competitive. There can be no assurance that any carrier will elect to offer its services within our IBX hubs. In addition, there can be no assurance once a carrier has decided to provide Internet connectivity to our IBX hubs that it will continue to do so for any period of time.

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The construction required to connect multiple carrier facilities to our IBX hubs is complex and involves factors outside of our control, including regulatory processes and the availability of construction resources. If the establishment of highly diverse Internet connectivity to our IBX hubs does not occur or is materially delayed or is discontinued, our operating results and cash flow will be adversely affected. Further, many carriers are experiencing business difficulties. As a result, some carriers may be forced to terminate connectivity within our IBX hubs.

We have service level commitment obligations to certain of our customers. As a result, service interruptions or significant equipment damage in our IBX hubs, whether or not within our control, could result in service level commitments to these customers. Our liability insurance may not be adequate to cover those expenses. In addition, any loss of services, equipment damage or inability to meet our service level commitment obligations, particularly in the early stage of our development, 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.

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

Our business depends on providing customers with highly reliable service. We must protect customers' IBX infrastructure and customers' equipment located in our IBX hubs. The services we provide are subject to failure resulting from numerous factors, including:

- human error;
- physical or electronic security breaches;
- fire, earthquake, flood and other natural disasters;
- water damage;
- power loss;
- sabotage and vandalism; and
- failure of business partners who provide the combined company's resale products.

Problems at one or more of our IBX hubs, whether or not within our control, could result in service interruptions or significant equipment damage. In the past, a limited number of our customers have experienced temporary losses of power and failure of our services levels on products such as bandwidth connectivity. If we incur significant financial commitments to our customers in connection with a loss of power, or our failure to meet other service level commitment obligations, our liability insurance may not be adequate to cover those expenses. In addition, any loss of services, equipment damage or inability to meet our service level commitment obligations, particularly in the early stage of our development, 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 will be dependent upon Internet service providers, telecommunications carriers and other website operators in the U.S., Asia and elsewhere, some of which may have experienced significant system failures and electrical outages in the past. Users of our services may in the future experience difficulties due to system failures unrelated to our systems and services. If for any reason, these providers failed to provide the required services, our business, financial condition and results of operations could be materially adversely impacted.

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

There is no known prevention or defense against denial of service attacks. During a prolonged denial of service attack, the Internet service will not be available for several hours, thus impacting hosted customers on-line business transactions. Affected customers might file claims against us under such circumstances.

To the extent a failure of our physical infrastructure, services, or services provided by service providers results in decreased revenues, we may not be able to comply with covenants in our credit facility. If we are unable to comply with covenants in our credit facility, the banks may require repayment of all outstanding amounts, and we do not have sufficient cash reserves to repay those amounts.

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

Our IBX hubs are susceptible to regional costs of power, electrical power shortages, planned or unplanned power outages caused by these shortages, such as those that occurred in California during 2001, and limitations, especially internationally, of adequate power resources. The overall power shortage in California has increased the cost of energy, which we may not be able to pass on to our customers. We attempt to limit exposure to system downtime by using backup generators and power supplies. Power outages, which last beyond our backup and alternative power arrangements, could harm our customers and our business.

### **We may experience service interruptions, loss of customers and drain on resources if we are unable to renew our facility leases.**

We have several short-term leases on our IBX hubs that are located outside of North America. For example, we currently lease approximately 86,100 square feet for our facility in Singapore, of which approximately 71,900 square feet expire in July 2003. Upon its expiration, we may not be able to renew our leases under reasonable terms, if at all and may have to relocate our IBX hubs to other facilities. A relocation of any IBX hub could result in service interruptions and significant additional expenses. In addition, seeking a new facility could divert management's attention and our resources.

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

We may seek to acquire complementary businesses, products, services and technologies. As a result of these acquisitions, we may be required to incur additional debt and expenditures and issue additional shares of our stock to pay for the acquired business, product, service or technology, which will dilute existing stockholders' ownership interest in the combined company. In addition, if we fail to successfully integrate and manage acquired businesses, products, services and technologies, our business and financial results would be harmed.

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

In the past, securities class action litigation has often been brought against a company following periods of volatility in the market price of its securities. During the quarter ended September 30, 2001, putative shareholder class action lawsuits were filed against us, a number of our officers and directors, and several investment banks that were underwriters of our initial public offering. The suits allege that the underwriter defendants agreed to allocate stock in our initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectus for our initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. The defense of this litigation may increase our expenses and divert management's attention and resources. An adverse outcome in this litigation could seriously harm our business and results of operations. In addition, we may, in the future, be subject to other securities class action or similar litigation.

**Risks related to our Industry**

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

Acceptance and use of the Internet may not continue to develop at historical rates and a sufficiently broad base of consumers may not adopt or continue to use the Internet and other online services as a medium of commerce. Demand for Internet services and products are subject to a high level of uncertainty and are subject to significant pricing pressure, especially in Asia-Pacific. In addition, even if consumers do adopt and continue to use online services, we do not expect a significant increase in revenues until the economy begins to improve generally. As a result, we cannot be certain that a viable market for our IBX hubs will materialize. If the market for our IBX hubs grows more slowly than we currently anticipate, our revenues will not grow and our operating results will suffer. If we cannot grow revenues while reducing costs, we may not be able to comply with the covenants in our credit facility. If we breach the credit facility, the banks could require repayment of all amounts previously drawn down and we do not have sufficient cash reserves to repay such amounts.

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

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

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

The September 11, 2001 terrorist attacks in the U.S., the ensuing declaration of war on terrorism and the continued threat of terrorist activity and other acts of war or hostility appear to be having an adverse effect on business, financial and general economic conditions internationally. These effects may, in turn, result in increased costs due to the need to provide enhanced security, which would have a material adverse effect on our business and results of operations. These circumstances may also adversely affect our ability to attract and retain customers, our ability to raise capital and the operation and maintenance of our IBX hubs.

**The recent outbreak of SARS in the Asia-Pacific region and its continued spread could harm sales of our products.**

The recent outbreak of severe acute respiratory syndrome, or SARS, that began in China, Hong Kong, Singapore and Vietnam may have a negative impact on our business. Our business may be impacted by a number of SARS-related factors, including, but not limited to, disruptions in the operations of our IBX hubs in affected areas including Hong Kong and Singapore, disruptions in the operations of our customers and their partners, reduced sales in certain end-markets, and increased costs to conduct our business abroad. If the number of cases of SARS continues to rise or spread to other areas, including the United States, our business could potentially be harmed.

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

**Market Risk**

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

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

**Interest Rate Risk**

Our exposure to market risk resulting from changes in interest rates relates primarily to our investment portfolio. Our interest income is impacted by changes in the general level of U.S. interest rates, particularly since the majority of our investments are in short-term instruments. Due to the short-term nature of our investments, we do not believe that we are subject to any material market risk exposure. An immediate 10% increase or decrease in current interest rates would not have a material effect on the fair market value of our investment portfolio. We would not expect our operating results or cash flows to be significantly affected by a sudden change in market interest rates in our investment portfolio.

An immediate 10% increase or decrease in current interest rates would furthermore not have a material impact to our debt obligations due to the fixed nature of our long-term debt obligations, except for the interest expense associated with our credit facility, which bears interest at floating rates, plus applicable margins, based on either the prime rate or LIBOR. As of March 31, 2003, the credit facility had an effective interest rate of 6.14%. The fair market value of our long-term fixed interest rate debt is subject to interest rate risk. Generally, the fair market value of fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. These interest rate changes may affect the fair market value of the fixed interest rate debt but does not impact our earnings or cash flows.

The fair market value of our senior notes is based on quoted market prices. The estimated fair value of our senior notes as of March 31, 2003 was approximately \$5.5 million.

**Foreign Currency Risk**

Prior to December 31, 2002, all of our recognized revenue had been denominated in U.S. dollars, generated mostly from customers in the U.S., and our exposure to foreign currency exchange rate fluctuations had been minimal. However, commencing in fiscal 2003, as a result of the combination, approximately 15% to 20% of our revenues will be in the Asia-Pacific region, and a large portion of those revenues will be denominated in a currency other than the U.S. dollar, primarily the Singapore dollar, Japanese yen and Hong Kong and Australian dollars. As a result, our operating results and cash flows will be impacted due to currency fluctuations relative to the U.S. dollar.

Furthermore, to the extent that our international sales are denominated in U.S. dollars, an increase in the value of the U.S. dollar relative to foreign currencies could make our services less competitive in the international markets. Although we will continue to monitor our exposure to currency fluctuations, and when appropriate, may use financial hedging techniques in the future to minimize the effect of these fluctuations, we cannot assure you that exchange rate fluctuations will not adversely affect our financial results in the future.

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### **Commodity Price Risk**

Certain operating costs incurred by us are subject to price fluctuations caused by the volatility of underlying commodity prices. The commodities most likely to have an impact on our results of operations in the event of significant price changes are electricity and supplies and equipment used in our IBX hubs. We are closely monitoring the cost of electricity, particularly in California. To the extent that electricity costs continue to rise, we are investigating opportunities to pass these additional power costs onto our customers that utilize this power. We do not employ forward contracts or other financial instruments to hedge commodity price risk.

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

Within 90 days prior to the date of filing this report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Chief Executive Officer and the Chief Financial Officer, of the design and operation of the Company's disclosure controls and procedures. Based on this evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective for gathering, analyzing and disclosing the information the Company is required to disclose in the reports it files under the Securities Exchange Act of 1934, within the time periods specified in the SEC's rules and forms. There have been no significant changes in the Company's internal controls or in other factors that could significantly affect internal controls subsequent to the date of this evaluation.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings.**

On July 30, 2001 and August 8, 2001, putative shareholder class action lawsuits were filed against us, certain of our officers and directors, and several investment banks that were underwriters of our initial public offering. The cases were filed in the United States District Court for the Southern District of New York, purportedly on behalf of investors who purchased our stock between August 10, 2000 and December 6, 2000. The suits allege that the underwriter defendants agreed to allocate stock in our initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. The plaintiffs allege that the prospectus for our initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. It is possible that additional similar complaints may also be filed. We and our officers and directors intend to defend the actions vigorously. On October 9, 2002, as part of an agreement with the plaintiffs in such lawsuits, all claims against our officers and directors were dismissed without prejudice.

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**Item 2. Changes in Securities and Use of Proceeds.**

(a) Modification of Constituent Instruments.

None.

(b) Change in Rights.

None.

(c) Issuance of Securities.

None.

(d) Use of Proceeds.

The effective date of the Company's registration statement for our initial public offering, filed on Form S-1 under the Securities Act of 1933, as amended (Commission File No. 333-93749), was August 10, 2000. There has been no change to the disclosure contained in the Company's report on Form 10-Q for the quarter ended September 30, 2000 regarding the use of proceeds generated by the Company's initial public offering of its common stock.

**Item 3. Defaults Upon Senior Securities.**

None.

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

None.

**Item 5. Other Information.**

None.



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### Item 6. Exhibits and Reports on Form 8-K.

#### (a) Exhibits.

| <u>Exhibit<br/>Number</u> | <u>Description of Document</u>   |
|---------------------------|--|
| 2.1*****                  | Combination Agreement, dated as of October 2, 2002, by and among Equinix, Inc., Eagle Panther Acquisition Corp., Eagle Jaguar Acquisition Corp., i-STT Pte Ltd, STT Communications Ltd., Pihana Pacific, Inc. and Jane Dietze, as representative of the stockholders of Pihana Pacific, Inc. |
| 3.1††                     | Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.   |
| 3.2†                      | Bylaws of the Registrant.  |
| 3.3††                     | Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock.   |
| 4.1                       | Reference is made to Exhibits 3.1, 3.2 and 3.3.  |
| 4.2**                     | Form of Registrant's Common Stock certificate.   |
| 4.6*                      | Common Stock Registration Rights Agreement (See Exhibit 10.3).   |
| 4.9*                      | Amended and Restated Investors' Rights Agreement (See Exhibit 10.6).   |
| 4.10†                     | Registration Rights Agreement (See Exhibit 10.75).   |
| 10.1*                     | Indenture, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as trustee).   |
| 10.2*                     | Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).   |
| 10.3*                     | Common Stock Registration Rights Agreement, dated as of December 1, 1999, by and among the Registrant, Benchmark Capital Partners II, L.P., Cisco Systems, Inc., Microsoft Corporation, ePartners, Albert M. Avery, IV and Jay S. Adelson (as investors), and the Initial Purchasers.        |
| 10.4*                     | Registration Rights Agreement, dated as of December 1, 1999, by and among the Registrant and the Initial Purchasers.   |
| 10.5*                     | Form of Indemnification Agreement between the Registrant and each of its officers and directors.   |
| 10.6*                     | Amended and Restated Investors' Rights Agreement, dated as of May 8, 2000, by and between the Registrant, the Series A Purchasers, the Series B Purchasers, the Series C Purchasers and members of the Registrant's management.  |
| 10.8*                     | The Registrant's 1998 Stock Option Plan.   |
| 10.9*+                    | Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.  |
| 10.10*+                   | Lease Agreement with Market Halsey Urban Renewal, LLC, dated as of May 3, 1999.  |
| 10.11*+                   | Lease Agreement with Laing Beaumeade, dated as of November 18, 1998.   |
| 10.12*+                   | Lease Agreement with Rose Ventures II, Inc., dated as of June 10, 1999.  |
| 10.13*+                   | Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 8, 1999.  |
| 10.14*+                   | First Amendment to Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of October 28, 1999.  |
| 10.15*+                   | Lease Agreement with Nexcomm Asset Acquisition I, L.P., dated as of January 21, 2000.  |
| 10.16*+                   | Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of December 15, 1999.  |
| 10.17*                    | Lease Agreement with ARE-2425/2400/2450 Garcia Bayshore LLC, dated as of January 28, 2000.   |
| 10.19*+                   | Master Agreement for Program Management, Site Identification and Evaluation, Engineering and Construction Services between Equinix, Inc. and Bechtel Corporation, dated November 3, 1999.  |

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| <u>Exhibit<br/>Number</u> | <u>Description of Document</u>   |
|---------------------------|--|
| 10.20*+                   | Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.   |
| 10.21*                    | Customer Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.  |
| 10.22*+                   | Lease Agreement with GIP Airport B.V., dated as of April 28, 2000.   |
| 10.23*                    | Purchase Agreement between International Business Machines Corporation and Equinix, Inc. dated May 23, 2000.   |
| 10.24**                   | 2000 Equity Incentive Plan.  |
| 10.25**                   | 2000 Director Option Plan.   |
| 10.26**                   | 2000 Employee Stock Purchase Plan.   |
| 10.27**                   | Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.  |
| 10.28***+                 | Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of July 1, 2000.   |
| 10.29***+                 | Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of May 1, 2000.  |
| 10.30***+                 | Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 24, 2000.   |
| 10.31***+                 | Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.   |
| 10.32***+                 | Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of August 7, 2000.   |
| 10.33***+                 | Lease Agreement with Quattrocento Limited, dated as of June 1, 2000.   |
| 10.34***                  | Lease Agreement with ARE-2425/2400/2450 Garcia Bayshore, LLC, dated as of March 20, 2000.  |
| 10.35***                  | First Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of October 11, 2000.   |
| 10.37****+                | Lease Agreement with Quattrocento Limited, dated as of June 9, 2000.   |
| 10.38****+                | Lease Agreement with Compagnie des Entrepots et Magasins Generaux de Paris, dated as of July 18, 2000.   |
| 10.39****+                | Second Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of December 22, 2000.   |
| 10.40****                 | Third Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of March 8, 2001.  |
| 10.41****+                | Fourth Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, acting in partnership under the name Naxos-Union Grundstücksverwaltungsgesellschaft GbR, dated as of July 3, 2001. |
| 10.42****+                | First Amendment to Deed of Lease with TrizecHahn Beaumeade Technology Center LLC, dated as of March 22, 2001.  |
| 10.43****+                | First Lease Amendment Agreement with Market Halsey Urban Renewal, LLC, dated as of May 23, 2001.   |
| 10.44****+                | First Amendment to Lease with Nexcomm Asset Acquisition I, L.P., dated as of April 18, 2000.   |
| 10.45****+                | Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of December 18, 2000.   |

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| <u>Exhibit<br/>Number</u> | <u>Description of Document</u>  |
|---------------------------|---|
| 10.46*****                | First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 26, 2001.  |
| 10.47*****                | Amended and Restated Credit and Guaranty Agreement, dated as of September 30, 2001.   |
| 10.47*****                | Amended and Restated Credit and Guaranty Agreement, dated as of September 30, 2001.   |
| 10.48*****                | 2001 Supplemental Stock Plan.   |
| 10.49*****                | Deed Terminating a Commercial Lease with Compagnie des Entrepots et Magasins Generaux de Paris, dated as of September 7, 2001.  |
| 10.50*****                | Agreement terminating the Lease Agreement with Naxos Schmirdelwork Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of April 26, 2002.  |
| 10.51*****                | Agreement to Surrender of a Lease Agreement by and between Equinix UK Limited and Quattrocentro Limited, dated as of February 27, 2002.   |
| 10.52*****                | Termination Agreement by and among Equinix, Inc. and Deka Immobilien Investment GMBH, successor in title to GIP Airport B.V., dated as of February 18, 2002, terminating the Lease Agreement with GIP Airport B.V., dated as of April 28, 2000. |
| 10.53*****                | Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of May 20, 2002.   |
| 10.54*****+               | Amended and Restated Master Service Agreement by and between International Business Machines Corporation and Equinix, Inc., dated as of May 1, 2002.  |
| 10.55*****                | Agreement for Termination of Lease and Voluntary Surrender of Premises by and between ARE-2425/2400/2450 Garcia Bayshore LLC and Equinix Operating Co., Inc., dated as of July 12, 2002.  |
| 10.56*****+               | Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.   |
| 10.57*****+               | First Amendment to Lease Agreement for property located at 2450 Bayshore Parkway, Mountain View, CA 94043, dated as of October 1, 2002.   |
| 10.58*****                | Form of Severance Agreement entered into by the Company and each of the Company's executive officers.   |
| 10.59†                    | Second Amended and Restated Credit and Guaranty Agreement, dated as of December 31, 2002.   |
| 10.60†                    | Governance Agreement by and among Equinix, Inc., STT Communications Ltd., i-STT Communications Ltd.,— STT Investments Pte Ltd and the Pihana Pacific stockholder named therein, dated as of December 31, 2002.                                  |
| 10.61†                    | Tenancy Agreement over units #06-01, #06-05, #06-06, #06-07 and #06-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.   |
| 10.62†                    | Tenancy Agreement over units #05-05, #05-06, #05-07 and #05-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.   |
| 10.63†                    | Tenancy Agreement over units #03-01 and #03-02 of Block 28 Ayer Rajah Crescent, Singapore 139959.   |
| 10.64†                    | Tenancy Agreement over units #05-01, #05-02, #05-03 and #05-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.   |
| 10.65†                    | Tenancy Agreement over units #03-05, #03-06, #03-07 and #03-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.   |
| 10.66†                    | Lease Agreement with Nation Multimedia Group Public Co., Ltd. For 1st and 3rd Floor of Nation Building II, Bangkok, dated as of February 1, 2001.   |
| 10.67†                    | Lease Agreement with Nation Multimedia Group Public Co., Ltd. For 6th Floor of Nation Tower, Bangkok, dated as of October 1, 2001.  |
| 10.68†                    | General Factory Lease Agreement dated February 21, 2001.  |

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| <u>Exhibit<br/>Number</u> | <u>Description of Document</u>  |
|---------------------------|---|
| 10.69†                    | Lease Agreement with Downtown Properties, LLC dated April 10, 2000, as amended.   |
| 10.70†                    | Lease Agreement with Comfort Development Limited dated November 10, 2000.   |
| 10.71†                    | Lease Agreement with PacEast Telecom Corporation dated June 15, 2000, as amended.   |
| 10.72†                    | Lease Agreement Lend Lease Real Estate Investments Limited dated October 20, 2000.  |
| 10.73†                    | Lease Agreement with AIPA Properties, LLC dated November 1, 1999, as amended.   |
| 10.74†                    | Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.  |
| 10.75†                    | Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.   |
| 10.76†                    | Securities Purchase Agreement by and among Equinix, the Guarantors and the Purchasers, dated as of October 2, 2002.   |
| 10.77†                    | Series A-1 Convertible Secured Note Due 2007 issued to i-STT Investments Pte Ltd on December 31, 2002.  |
| 10.78†                    | Preferred Stock Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.   |
| 10.79†                    | Change in Control Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.   |
| 10.80†                    | Series A Cash Trigger Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.   |
| 10.81†                    | Series B Cash Trigger Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.   |
| 10.82†                    | First Supplemental Indenture between Equinix and State Street Bank and Trust Company of California, N.A., as Trustee, dated as of December 28, 2002.  |
| 10.83†††                  | Securities Purchase and Admission Agreement, dated April 29, 2003, among Equinix, certain of Equinix's subsidiaries, i-STT Investments Pte Ltd, STT Communications Ltd and affiliates of Crosslink Capital. |
| 10.84                     | Sublease by and between Electronics for Imaging as Landlord and Equinix Operating Co., Inc. as Tenant dated February 12, 2003.  |
| 16.1*                     | Letter regarding change in certifying accountant.   |
| 21.1†                     | Subsidiaries of Equinix.  |
| 99.1                      | Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |
| 99.2                      | Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |

\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Registration Statement on Form S-4 (Commission File No. 333-93749).

\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Registration Statement in Form S-1 (Commission File No. 333-39752).

\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000.

\*\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K for the year ended December 31, 2000.

\*\*\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001.

\*\*\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001.

\*\*\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K for the year ended December 31, 2001.

\*\*\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.

\*\*\*\*\* Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.

\*\*\*\*\* Incorporated herein by reference to Annex A of Equinix's Definitive Proxy Statement filed with the Commission December 12, 2002.

† Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K for the year ended December 31, 2002.

†† Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K/A for the year ended December 31, 2002.

††† Incorporated herein by reference to exhibit 10.1 in the Registrant's filing on Form 8-K on May 1, 2003.

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

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(b) Reports on Form 8-K.

On January 2, 2003, the Company filed a Current Report on Form 8-K to file the Company's press release from December 31, 2002, in which the Company reported that it had completed the combination, financing, senior note exchange, further amendment to the credit facility and a one for 32 reverse stock split on December 31, 2002.

On January 2, 2003, the Company filed a Current Report on Form 8-K to report the shares beneficially owned by the Company's principal stockholders as of December 31, 2002 upon completion of the combination and financing events that closed on the same day.

On March 5, 2003, the Company filed a Current Report on Form 8-K to file the Company's press release from March 4, 2003, in which the Company reported its 2002 fourth quarter and year-end results.

**EQUINIX, INC.**  
**SIGNATURE**

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

EQUINIX, INC.

Date: May 15, 2003

By:

/s/ RENEE F. LANAM

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Chief Financial Officer and Secretary  
(Principal Financial Officer)

/s/ KEITH D. TAYLOR

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Vice President, Finance  
(Principal Accounting Officer)

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Peter F. Van Camp, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, Inc
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934, as amended) for the registrant and we have:
  - a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors:
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: May 15, 2003

/s/ PETER F. VAN CAMP

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Peter F. Van Camp  
Chief Executive Officer

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Renee F. Lanam, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, Inc.
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934, as amended) for the registrant and we have:
  - a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors:
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officer and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: May 15, 2003

/s/ RENEE F. LANAM

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Renee F. Lanam  
Chief Financial Officer



SUBLEASE

BY AND BETWEEN

ELECTRONICS FOR IMAGING, INC.,  
a Delaware corporation

as Landlord

and

EQUINIX OPERATING CO., INC.  
a Delaware corporation

as Tenant

February 12, 2003

SUBLEASE

THIS SUBLEASE, dated February 12, 2003, for reference purposes only, is made by and between ELECTRONICS FOR IMAGING, INC., a Delaware corporation ("Landlord") and Equinix Operating Co., Inc., a Delaware corporation ("Tenant"), to be effective and binding upon the parties as of the date the last of the designated signatories to this Lease shall have executed this Lease (the "Effective Date of this Lease").

RECITALS

A. Landlord is the lessee under that certain Master Lease (the "Master Lease") dated as of December 29, 1999, by and between Societe Generale Financial Corporation, a Delaware corporation ("Owner"), as Lessor, and Landlord, as Lessee.

B. Pursuant to the Master Lease, Owner leases to Landlord and Landlord leases from Owner, the Property and the Building.

C. Tenant desires to sublease from Landlord, and Landlord desires to sublease to Tenant, the Leased Premises (as defined below), and the parties have therefore agreed to enter into this Sublease. As used in this Sublease, the capitalized terms "Lease" and "Sublease" shall each mean and refer to this Sublease.

ARTICLE 1

REFERENCE

1.1 References. All references in this Lease (subject to any further clarifications contained in this Lease) to the following terms shall have the following meaning or refer to the respective address, person, date, time period, amount, percentage, calendar year or fiscal year as below set forth:

Tenant's Address for Notice:  
Prior to occupancy: 2450 Bayshore Parkway  
Mountain View, California 94043-1107  
After occupancy:  
301 Velocity Way  
Foster City, California 94404  
Tenant's Representative: Kristine Mostofizadeh  
(650) 316-6000  
Landlord's Address for Notices: Electronics For Imaging, Inc.  
303 Velocity Way  
Foster City, California 94404  
Facsimile No.: (650) 357-3178

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Landlord's Representative: Peter Schaffer  
Phone Number: (650) 357-3500  
Intended Commencement Date: March 1, 2003  
Intended Term: Sixty-One (61) months  
Lease Expiration Date: Sixty-One Months (61) months from  
the Commencement Date (as defined  
below), unless (a) earlier  
terminated by Landlord in accordance  
with the terms of this Lease, or (b)  
extended pursuant to Article 15

below.

Base Year 2003

First through Ninth Month's Prepaid Rent: \$ 766,665.00

Tenant's Security Deposit: \$ 85,185.00

Total due @ lease execution \$851,850.00

Late Charge Amount: Five percent (5%) of the Delinquent Amount

Tenant's Required Liability Coverage: \$5,000,000 Combined Single Limit

Broker(s): Tenant: David Tipton, Cresa Partners  
Landlord: Insignia/ESG

Project: The land, and any buildings, landscaping, parking spaces, roadways, walkways and any other improvements or fixtures on the land, located in the City of Foster City, County of San Mateo, State of California, and legally described on Exhibit A attached hereto.

Property: That certain real property situated in the City of Foster City, County of San Mateo, State of California, legally described as follows: Lot 7, as delineated upon that certain Map filed for record in the Office of the Recorder of the County of San Mateo, State of California, on August 27, 1997, in Book 128 of Maps, at pages 5, 6, 7, and 8, entitled "Tract No. 143-97", Vintage Park, being a re-subdivision of Lots 8, 9, and 10, as said lots are shown on that certain map entitled "Tract No. 92-83", filed for record on December 3, 1985 in Book

2.

114 of Maps at pages 27-31, as amended by Certificate of Correction Recorded February 2, 1990 as Instrument Number 90016902, San Mateo County Records, Foster City, San Mateo County, California." The Property is also shown approximately on the Site Plan attached hereto as Exhibit B.

Building: One five (5) story steel frame office/light assembly/R&D building consisting of approximately 163,062 rentable square feet, located on the Property, with primary frontage on Velocity Way, and in which the Leased Premises are located (the "Building"). The approximate location of the proposed footprint of the Building is shown outlined on Exhibit B hereto.

Outside Areas: The "Outside Areas" shall mean all areas within the Property which are located outside the Building, such as pedestrian walkways, loading docks, bike racks, parking areas, landscaped areas, open areas and enclosed trash disposal areas.

Leased Premises: Certain interior space within the Building, including stairwells, connecting walkways, and atriums, consisting of approximately 34,074 square feet (inclusive of an 7.38%

load factor) and, for purposes of this Lease, agreed and stipulated to contain said number of square feet. The Leased Premises are outlined on the Floor Plan attached hereto as Exhibit C.

Cafe and Workout Facilities: During the term of this Lease, Tenant shall also be entitled to use the Cafe facilities located on the first floor of the Building and the building located at 303 Velocity Drive, and the workout facilities (on a fee basis) located on the first floor of the Building.

Tenant's Expense Share of the Building: The term "Tenant's Expense Share of the Building" shall mean the percentage obtained from time to time by dividing the rentable square footage of the Leased Premises at the time of calculation by the rentable square footage of the Building. Such percentage is currently 20.52%. In the event that the rentable square footage of the Leased Premises or of the Building is structurally changed, Tenant's

3.

Expense Share of the building shall be recalculated as necessary so that the aggregate Tenant's Expense Share of the Building of all tenants shall equal 100%.

Lease Year: As used herein, the term "Lease Year" shall mean each twelve (12) month period during the Lease Term; provided that the first Lease Year shall commence upon March 1, 2003 and end on March 31, 2004 and rent will commence on April 1, 2003. The second and subsequent Lease Years shall begin on April 1, 2004.

Base Monthly Rent: The term "Base Monthly Rent" shall mean the following amounts: (a) \$0 per rentable square foot per month from the Delivery Date until April 1, 2003; and (b) \$2.50 per rentable square foot per month thereafter during the first Lease Year; (c) at the end of the each Lease Year, Base Monthly Rent shall be increased for the ensuing Lease Year by 3% per annum compounded annually.

Property Operating Expenses: Tenant shall be responsible for paying any Property Operating Expenses commencing with the second Lease Year.

Permitted Use: General office, research and development, marketing, light assembly, related incidental storage and other related legal uses in strict accordance with all Laws and Restrictions.

Parking Spaces: Such number of spaces as may be required by applicable Laws from time to time, but in no event to exceed 3 spaces per 1000 rentable square feet within the Premises, on an undesignated and unreserved basis, to be located in such areas of the Property and/or the Project as may be reasonably specified by Landlord from time to time.

Exhibits: The term "Exhibits" shall mean the

Exhibits of this Lease which are described as follows:

Exhibit A - Legal Description of the Project

Exhibit B - Site Plan -Project, Building, General Parking Areas.

Exhibit C - Floor Plan / Space Plan

4.

Exhibit D - Work Letter

Exhibit E - Standard Tenant Improvements / Furniture

Exhibit F - Rules and Regulations

Exhibit G - Form of Tenant Estoppel Certificate

#### ARTICLE 2

##### LEASED PREMISES, TERM AND POSSESSION

2.1 Demise Of Leased Premises. Landlord hereby subleases to Tenant and Tenant hereby subleases from Landlord for Tenant's own use in the conduct of Tenant's business and not for purposes of speculating in real estate, for the Lease Term and upon the terms and subject to the conditions of this Lease, that certain interior space described in Article 1 as the Leased Premises, reserving and excepting to Landlord the right to seventy-five percent (75%) of all assignment consideration and excess rentals as provided in Article 7 below. Tenant's sublease of the Leased Premises, together with the right to use the Outside Areas as described in Paragraph 2.2 below, shall be conditioned upon and be subject to the continuing compliance by Tenant with (i) all the terms and conditions of this Lease, (ii) all Laws governing the use of the Leased Premises, the Property, and the Project, (iii) all Private Restrictions, easements and other matters now or hereafter of public record and of which Tenant has been given written notice respecting the use of the Leased Premises, the Property, and the Project, and (iv) the Rules and Regulations (as defined in Paragraph 4.12). Notwithstanding any provision of this Lease to the contrary, Landlord hereby reserves to itself and its designees all rights of access, use and occupancy of the Building roof, and Tenant shall have no right of access, use or occupancy of the Building roof Tenant shall have access to the Leased Premises twenty-four (24) hours a day, seven (7) days a week and three hundred sixty-five (365) days a year.

2.2 Right To Use Outside Areas, Cafe Facilities and Workout Facilities. Tenant shall have the right (in conjunction with all other tenants of the Building) to use those portions of the Outside Areas as may be designated in writing by Landlord from time to time, such use to be in conjunction with its use of the Leased Premises and solely for the purposes for which they were designated and intended and for no other purposes whatsoever. In addition, so long as Landlord operates the facilities for its employees, Landlord shall make available to Tenant, its agents, employees and invitees, the following: (i) at no extra charge, the Cafe facility located on the first floor of the Building; (ii) at no extra charge, the Cafe facility located on the first floor of 303 Velocity Drive, every weekday except the first Friday of each month; (iii) at a cost of \$ (to be passed through without profit) per person per month for each person that Tenant desires should have access to such facility, the workout facility located on the first floor of the Building. With respect to the workout facilities, Landlord shall make such workout facility available for Tenant's use no later than sixty (60) days after the Lease Commencement Date Tenant's right to so use the Cafe facilities, the workout facilities and the Outside Areas shall be subject to the limitations on such use as set forth in Article 1 and in the Rules and Regulations, and shall

5.

terminate concurrently with any termination of this Lease. Except as provided herein, Tenant shall have no right to use any portions of the Project except those portions, if any, of the Project as may be expressly designated in writing by Landlord from time to time, such use to be in conjunction with Tenant's use of the Leased Premises and solely for the purposes for which they were designated and intended and for no other purposes whatsoever. Tenant's right, if any, to so use portions of the Project shall be subject to such limitations on such use as may be in the Rules and Regulations or otherwise as Landlord may prescribe and shall terminate concurrently with any termination of this Lease. In no event shall Tenant have any right to use any portion of the Project occupied by Landlord or utilized on a substantially exclusive basis by Landlord.

2.3 Lease Commencement Date And Lease Term. The date on which the term of this Lease shall begin (the "Lease Commencement Date") shall be the earlier of March 1, 2003 or the date on which Landlord delivers possession of the Leased Premises to Tenant pursuant to Paragraph 2.4 below. The term of this Lease shall in all events end on the Lease Expiration Date (as set forth in Article 1), unless earlier terminated by Landlord. The Lease Term shall be that period of time commencing on the Lease Commencement Date and ending on the Lease Expiration Date (the "Lease Term").

2.4 Delivery Of Possession. Landlord shall deliver to Tenant possession of the Leased Premises, demised as shown on Exhibit C attached hereto, no later than March 1, 2003 (the "Intended Delivery Date"), so that Tenant can commence installation of its furniture, fixtures and equipment, including, without limitation, data and telecommunications equipment and cabling and the Improvement Work. If Landlord is unable to so deliver possession of the Leased Premises to Tenant on or before the Intended Delivery Date due to any reason that is beyond Landlord's reasonable control, Landlord shall not be in default under this Lease, nor shall this Lease be void, voidable or cancelable by Tenant; provided, however, that Tenant shall have no obligations under this Lease until such Delivery Date occurs. If Landlord is unable to so deliver possession of the Leased Premises to Tenant by May 1, 2003 (including any extension thereof by reason of Force Majeure or the actions or inactions of Tenant) (the "delivery grace period"), then Tenant's shall be entitled to terminate this Lease. If the failure of the Delivery Date to occur on or before the Intended Delivery Date is due to factors beyond Landlord's reasonable control, then in such event the remedy described in the foregoing sentence shall be Tenant's sole remedy and in no event shall Landlord shall not be liable in damages to Tenant for such delay or such termination. The date upon which Landlord actually delivers possession of the Leased Premises to Tenant shall be referred to herein as the "Delivery Date."

2.5 Condition of Leased Premises, Performance Of Improvement Work; Acceptance Of Possession. Landlord represents and warrants to Tenant that as of the date hereof and the Delivery Date: (i) the construction and the operation of the Building, the Leased Premises and the Project are in full compliance with applicable building codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances, including, but not limited to, the Americans with Disabilities Act of 1990 ("ADA"); (ii) Landlord is not aware of any preexisting conditions with respect to the Leased Premises that would give rise to any maintenance, repair or replacement obligation on the part of Tenant pursuant to the terms hereof or that would need to be corrected in order for Tenant to use the Leased Premises for Tenant's intended use; and (iii) the building roof, HVAC system, sprinkler system, electrical system, plumbing, elevators, lighting systems and any other life safety equipment and systems

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are in good working order. No later than the Rent Commencement Date, Landlord shall cause to be installed in the Leased Premises at Landlord's cost and expense the furniture described in Exhibit E as well as all data and telecommunications equipment and cabling. In addition, Landlord shall provide, at its sole cost and expense, (i) with respect to Tenant's server room located in the Leased Premises, (a) a dedicated fan coil unit (which shall be installed no later than the Delivery Date); and (b) electricity and HVAC 24 hours per day, 7 days per week with UPS and generator backup power; and (ii) with respect to Tenant's workstations located in the Leased Premises, access to the Building's diesel generator for backup power purposes on one electric outlet for each workstation located in the Leased Premises. Landlord has constructed the shell and core of the Building (the "Building Shell and Core"), and Landlord shall, at Tenant's expense, pursuant to the work letter attached to this Lease as Exhibit D and made a part hereof (the "Work Letter"), perform the work and make the installations in the Leased Premises substantially as set forth in the Work Letter (such work and installations to be performed or made by Landlord on Tenant's behalf, hereinafter referred to as the "Improvement Work"). It is agreed that by taking delivery of the Leased Premises, Tenant formally accepts the Improvement Work and acknowledges that the Leased Premises are in the condition called for in the Work Letter. Landlord reserves the right, at any time and from time to time, to make alterations, additions, repairs or improvements to or in or to decrease the size or area of all or any part of the Building, the fixtures and equipment therein and the parks, plazas and walkways outside the Building, including, without limitation, (a) the "Building Systems" (defined herein as the heating, ventilating, air-conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building), (b) the common areas, and (c) all other parts of the Building, and to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets and other public parts of the Building, provided that any such alterations or additions not necessitated by governmental action shall not materially diminish the quality or quantity of services being provided to or unreasonably interfere with Tenant's use and occupancy of the Leased Premises.

2.6 Surrender Of Possession. Immediately prior to the expiration or upon the

sooner termination of this Lease, Tenant shall remove all of Tenant's signs (other than any signs installed by Landlord) from the exterior of the Building and shall remove all of Tenant's equipment, trade fixtures, furniture, supplies, wall decorations and other personal property from within the Leased Premises, the Building and the Outside Areas, and shall vacate and surrender the Leased Premises to Landlord in the same condition, broom clean, as existed upon completion of the Improvement Work in accordance with this Lease and the Work Letter, reasonable wear and tear excepted. Tenant shall repair all damage to the Leased Premises, the exterior of the Building and the Outside Areas caused by Tenant's removal of Tenant's property. Tenant shall patch and refinish, to Landlord's satisfaction, all penetrations made by Tenant or its employees to the floor, walls or ceiling of the Leased Premises, whether such penetrations were made with Landlord's approval or not. Tenant shall repair or replace all stained or damaged ceiling tiles, wall coverings and floor coverings to the satisfaction of Landlord, to the extent such repairs are necessitated by actions that are not considered normal wear and tear. Tenant shall repair all damage caused by Tenant to the exterior surface of the Building and the paved surfaces of the Outside Areas and, where necessary, replace or resurface same, to the extent such repairs are necessitated by actions that are not considered normal wear and tear. Additionally, to the extent that Landlord shall have notified Tenant in writing at the time the improvements were first approved that it desired to have certain improvements made by Tenant or at the request of Tenant

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removed at the expiration or sooner termination of the Lease, Tenant shall, upon the expiration or sooner termination of the Lease, remove any such improvements constructed or installed by Landlord or Tenant and repair all damage caused by such removal. If the Leased Premises (and the Building and the Outside Areas, to the extent applicable) are not surrendered to Landlord in the condition required by this paragraph at the expiration or sooner termination of this Lease, Landlord may, at Tenant's expense, so remove Tenant's signs, property and/or improvements not so removed and make such repairs and replacements not so made or hire, at Tenant's expense, independent contractors to perform such work. Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Leased Premises (and the Building and the Outside Areas, to the extent applicable) to the required condition, together with interest on all costs so incurred from the date paid by Landlord at the lesser of ten percent (10%) per annum or the then maximum rate of interest not prohibited or made usurious by Law until paid. Tenant shall pay to Landlord the amount of all costs so incurred plus such interest thereon, within thirty (30) days of receipt of Landlord's billing Tenant for same. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in surrendering the Leased Premises, including, without limitation, any claims made by any succeeding Tenant or any losses to Landlord with respect to lost opportunities to sublease to succeeding tenants.

### ARTICLE 3

#### RENT, LATE CHARGES AND SECURITY DEPOSITS

3.1 Base Monthly Rent. Commencing on the Rent Commencement Date of thirty (30) days after the Delivery Date [i.e., April 1, 2003 based on a Delivery Date of March 1, 2003], and continuing throughout the Lease Term, Tenant shall pay to Landlord, without prior demand therefore, in advance on the first day of each calendar month, the amount set forth as "Base Monthly Rent" in Article 1 (the "Base Monthly Rent").

3.2 Additional Rent. Commencing on the first day of the second Lease Year and continuing throughout the Lease Term, in addition to the Base Monthly Rent, Tenant shall pay to Landlord as additional rent (the "Additional Rent") the following amounts:

(a) An amount equal to all Property Operating Expenses (as defined in Article 13) incurred by Landlord. Landlord shall deliver to Tenant upon adoption of Landlord's annual budget, Landlord's estimate of Property Operating Expenses (including Landlord's Insurance Costs or Real Property Taxes), or group of expenses, which it anticipates will be paid or incurred for the such calendar year, as Landlord may determine, and Tenant shall pay to Landlord an amount equal to the estimated amount of such expenses for such year in equal monthly installments during such year with the installments of Base Monthly Rent. Landlord shall have the right in its reasonable discretion to revise such estimate and to change the methods of billing no more than once a year upon thirty (30) days prior written notice to Tenant.

(b) Landlord's share of the consideration received by Tenant upon certain assignments and sublettings as required by Article 7.

(c) Any legal fees and costs that Tenant is obligated to pay or reimburse to Landlord pursuant to Article 13; and

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(d) Any other charges or reimbursements due Landlord from Tenant pursuant to the terms of this Lease.

3.3 Year-End Adjustments; Audit Rights. Landlord shall furnish to Tenant within three months following the end of the applicable calendar or fiscal year, as the case may be, a statement setting forth (i) the amount of such expenses paid or incurred during the just ended calendar or fiscal year, as appropriate, and (ii) the amount that Tenant has paid to Landlord for credit against such expenses for such period. Landlord's annual statement shall be final and binding upon Landlord and Tenant unless Tenant within thirty (30) days after receipt thereof shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefore. If within thirty (30) days of Landlord's receipt of Tenant's timely delivered written notice contesting any items in an annual statement (the "Resolution Period"), Tenant and Landlord are unable to come to a resolution on any items that Tenant has contested, then, Landlord's books and records pertaining to the calculation of Operating Expenses and Tax Expenses for the preceding year may be audited by Tenant. If the results of such audit or annual statement show that Tenant's payments of Additional Rent for such calendar year exceeded Tenant's obligations for the calendar year, Landlord shall at Landlord's election, refund the over payment to Tenant or credit the excess to the next succeeding installments of Base Monthly and Additional Rent; provided, however, that if the Lease shall have terminated or expired, Landlord shall promptly refund such over payment to Tenant. If the annual statement shows that Tenant's payments of Additional Rent for such calendar year were less than Tenant's obligation for the calendar year, Tenant shall pay the deficiency to Landlord within thirty (30) days after receipt of such statement. If Tenant elects to audit Landlord's books, such audit shall be conducted at Tenant's expense, by an authorized representative of Tenant within a period of thirty (30) days following the Resolution Period. For purposes hereof, an authorized representative of Tenant shall mean any reputable accounting firm or other party experienced in such audits which is not being compensated on a contingency basis with respect to the audit. Prior to the commencement of any audit, Tenant shall cause its authorized representative to agree in writing, for the benefit of Landlord, that such representative will keep the results of such audit confidential and that such representative will not disclose or divulge the results of such audit, except to Tenant and Landlord. Such audit shall be conducted during reasonable business hours at a location designated by Landlord within the Project and must be completed within thirty (30) days following the end of the Resolution Period. The audit provisions of this paragraph shall survive the expiration or sooner termination of this Lease for no more than thirty (30) days following the final billing Resolution Period.

3.4 Late Charge And Interest On Rent In Default. Tenant acknowledges that the late payment by Tenant of any monthly installment of Base Monthly Rent or any Additional Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult or impractical to fix. Such costs and expenses will include without limitation, administration and collection costs and processing and accounting expenses. Therefore, if any installment of Base Monthly Rent is not received by Landlord from Tenant within five (5) calendar days after the same becomes due, Tenant shall immediately pay to Landlord a late charge in an amount equal to the amount set forth in Article 1 as the "Late Charge Amount," and if any Additional Rent is not received by Landlord within five (5) calendar days after the same becomes due, Tenant shall immediately pay to Landlord a late charge in an amount equal to 5% of the Additional Rent not so paid. Landlord and Tenant agree

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that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the anticipated loss Landlord would suffer by reason of Tenant's failure to make timely payment. In no event shall this provision for a late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rental installment or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay each rental installment due under this Lease when due, including the right to terminate this Lease. If any rent remains delinquent for a period in excess of ten (10) calendar days, then, in addition to such late charge, Tenant shall pay to Landlord interest on any rent that is not so paid from said tenth day at the then maximum rate of interest not prohibited or made usurious by Law until paid.

3.5 Payment Of Rent. Except as specifically provided otherwise in this Lease, all rent shall be paid in lawful money of the United States, without any abatement, reduction or offset for any reason whatsoever, to Landlord at such address as Landlord may designate from time to time. Tenant's obligation to pay Base Monthly Rent and all Additional Rent shall be appropriately prorated at the commencement and expiration of the Lease Term. The failure by Tenant to pay any Additional Rent as required pursuant to this Lease when due shall be treated the same as a failure by Tenant to pay Base Monthly Rent when due, and Landlord shall have the same rights and remedies against Tenant as Landlord would have had Tenant failed to pay the Base Monthly Rent when due.

3.6 Prepaid Rent. Tenant agrees, simultaneously with execution of this

lease, to deposit with Landlord an amount equal to the Base Monthly Rent for the first nine months rent on the initial term of this Lease. Landlord agrees to apply such amounts in a timely manner against the Base Monthly Rent due for the first through the ninth months of the initial Lease Term only; provided that if at any time Tenant is in default hereunder, beyond the applicable notice and cure period, Landlord may also apply such amount against other amounts payable by Tenant and then past due after written notice to Tenant.

3.7 Security Deposit. Tenant shall deposit with Landlord upon execution by Tenant of this Lease, the amount set forth in Article 1 as the "Security Deposit" as security for the performance by Tenant of the terms of this Lease to be performed by Tenant. The Security Deposit shall not be used as prepayment of rent. Tenant hereby grants to Landlord a security interest in the Security Deposit, including but not limited to replenishments thereof. Landlord may apply such portion or portions of the Security Deposit as are reasonably necessary for the following purposes: (i) to remedy any default by Tenant in the payment of Base Monthly Rent or Additional Rent or a late charge or interest on defaulted rent, or any other monetary payment obligation of Tenant under this Lease; (ii) to repair damage to the Leased Premises, the Building or the Outside Areas caused or permitted to occur by Tenant; (iii) to clean and restore and repair the Leased Premises, the Building or the Outside Areas following their surrender to Landlord if not surrendered in the condition required pursuant to the provisions of Article 2, and (iv) to remedy any other default of Tenant to the extent permitted by Law including, without limitation, paying in full on Tenant's behalf any sums claimed by materialmen or contractors of Tenant to be owing to them by Tenant for work done or improvements made at Tenant's request to the Leased Premises. In this regard, Tenant hereby waives any restriction on the uses to which the Security Deposit may be applied as contained in Section 1950.7(c) of the California Civil Code and/or any successor statute. In the event the Security Deposit or any portion thereof is so used,

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Tenant shall pay to Landlord, promptly upon demand, an amount in cash sufficient to restore the Security Deposit to the full original sum. Landlord shall not be deemed a trustee of the Security Deposit. Landlord may use the Security Deposit in Landlord's ordinary business and shall not be required to segregate it from Landlord's general accounts. Tenant shall not be entitled to any interest on the Security Deposit. If Landlord transfers the Building or the Property during the Lease Term, Landlord may pay or credit the Security Deposit to any subsequent owner in conformity with the provisions of Section 1950.7 of the California Civil Code and/or any successor statute, in which event the transferring landlord shall be released from all liability for the return of the Security Deposit.

#### ARTICLE 4

##### USE OF LEASED PREMISES AND OUTSIDE AREA

4.1 Permitted Use. Tenant shall be entitled to use the Leased Premises solely for the "Permitted Use" as set forth in Article 1 and for no other purpose whatsoever. Tenant shall continuously use the Leased Premises for such purpose for the entire Lease Term, and at all times in strict accordance with all Laws and Private Restrictions. Any discontinuance of such use for a period of sixty (60) consecutive calendar days (an "Abandonment") shall be, at Landlord's election, a default by Tenant under the terms of this Lease. Tenant shall have the right to use those portions of the Outside Areas as may be designated by Landlord from time to time, such use to be in conjunction with its Permitted Use of the Leased Premises and solely for the purposes for which they were designated and intended and for no other purposes whatsoever.

4.2 General Limitations On Use. Tenant shall not do or permit anything to be done in or about the Leased Premises, the Building, the Outside Areas, the Property, or the Project which does or could (i) jeopardize the structural integrity of the Building or (ii) cause damage to any part of the Leased Premises, the Building, the Outside Areas, the Property, or the Project. Tenant shall not operate any equipment within the Leased Premises which does or could (i) injure, vibrate or shake the Leased Premises or the Building, (ii) damage, overload or impair the efficient operation of any electrical, plumbing, heating, ventilating or air conditioning systems within or servicing the Leased Premises or the Building, or (iii) damage or impair the efficient operation of the sprinkler system (if any) within or servicing the Leased Premises or the Building. Tenant shall not install any equipment or antennas on or make any penetrations of the exterior walls or roof of the Building, without the prior written consent of Landlord, which shall not be unreasonably conditioned, delayed or withheld. Tenant shall not affix any equipment to or make any penetrations or cuts in the floor, ceiling, walls or roof of the Leased Premises without the prior written consent of Landlord which shall not be unreasonably conditioned, delayed or withheld. Tenant shall not place any loads upon the floors, walls, ceiling or roof systems which could endanger the structural integrity of the Building or damage its floors, foundations or supporting structural components. Tenant shall not place any explosive, flammable or harmful fluids or other waste materials in the drainage systems of the Leased Premises, the Building, the Outside Areas, the Property, or the Project. In no



event shall the Leased Premises be used for biotechnology or so-called "wet" laboratory purposes. Tenant shall not drain or discharge any fluids in the landscaped areas or across the paved areas of the Property. Tenant shall not use any of the Outside Areas for the storage of its materials, supplies, inventory or equipment and all such materials, supplies, inventory or equipment shall at all times

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be stored within the Leased Premises. Tenant shall not commit nor permit to be committed any waste in or about the Leased Premises, the Building, the Outside Areas, the Property, or the Project.

4.3 Noise And Emissions. All noise generated by Tenant in its use of the Leased Premises shall be confined or muffled so that it does not interfere with the businesses of or annoy the occupants and/or users of adjacent properties. All dust, fumes, odors and other emissions generated by Tenant's use of the Leased Premises shall be sufficiently dissipated in accordance with sound environmental practice and exhausted from the Leased Premises in such a manner so as not to interfere with the businesses of or annoy the occupants and/or users of adjacent properties, or cause any damage to the Leased Premises, the Building, the Outside Areas, the Property, or the Project or any component part thereof or the property of adjacent property owners.

4.4 Parking. Tenant shall have the use, on an undesignated and unreserved basis, of the number of parking spaces set forth in Article 1 above, such spaces to be in such areas of the Project as may be reasonably specified from time to time by Landlord for Tenant's parking as depicted on Exhibit B. Landlord shall be required to ensure that such spaces are available for Tenant's use, and in connection therewith Landlord shall be required to tow parked cars, provide sanctions against improper parking, or otherwise take steps to free occupied parking spaces for Tenant's use. Tenant shall not use any parking spaces for truck parking or loading except for spaces specifically designated for such use by Landlord. Tenant shall not, at any time, park or permit to be parked any recreational vehicles, inoperative vehicles or equipment in the Outside Areas or on any portion of the Property or the Project. Tenant agrees to assume responsibility for compliance by its employees and invitees with the parking provisions contained herein. Tenant shall have no right to park in any parking garage or structure heretofore or hereafter constructed by or on behalf of Landlord. If Tenant or its employees park any vehicle within the Property or the Project in violation of these provisions, then Landlord may, upon prior written notice to Tenant giving Tenant two (2) business days (or any applicable statutory notice period, if longer than two (2) business days to remove such vehicle(s), in addition to any other remedies Landlord may have under this Lease, charge Tenant, as Additional Rent after the expiration of such two (2) business day period, and Tenant agrees to pay, as Additional Rent, One Hundred Dollars (\$100) per day for each day or partial day that each such vehicle is so parked within the Property or the Project. Except for vehicles that Landlord has asked Tenant to remove, Tenant shall not tow or cause to be towed any vehicle located on the Property or the Project until three (3) full business days after Tenant has provided written notice to Landlord identifying such vehicle by brand, model, color, and license plate number and state. Landlord reserves the right to grant easements and access rights to others for use of the parking areas on the Property, provided that such grants do not unreasonably interfere with Tenant's use of the parking areas.

4.5 Signs. Landlord shall provide, at Landlord's sole cost and expense, signage on the Building monument and lobby directory. Tenant shall not place or install on or within any portion of the Leased Premises, the exterior of the Building, the Outside Areas, the Property, or the Project any sign, advertisement, banner, placard, or picture which is visible from the exterior of the Leased Premises. Tenant shall not place or install on or within any portion of the Leased Premises, the exterior of the Building, the Outside Areas, the Property, or the Project any business identification sign which is visible from the exterior of the Leased Premises until

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Landlord shall have approved in writing and in its sole discretion the location, size, content, design, method of attachment and material to be used in the making of such sign; provided, however, that so long as such signs are normal and customary business directional or identification signs within the Building, Tenant shall not be required to obtain Landlord's approval. Any sign, once approved by Landlord, shall be installed at Tenant's sole cost and expense and only in strict compliance with Landlord's approval, using a person approved by Landlord to install same. Landlord may remove any signs (which have not been approved in writing by Landlord and for which approval was required), advertisements, banners, placards or pictures so placed by Tenant on or within the Leased Premises, the exterior of the Building, the Outside Areas, the Property, or the Project and charge to Tenant the cost of such removal, together with any costs incurred by Landlord to repair any damage caused thereby, including any cost incurred to restore the surface (upon which such sign was so affixed) to its original condition. Tenant shall remove all of Tenant's signs

that were installed by Tenant or installed by Landlord on behalf of Tenant at Tenant's request, repair any damage caused thereby, and restore the surface upon which the sign was affixed to its original condition, all to Landlord's satisfaction, upon the termination of this Lease.

4.6 Compliance With Laws And Private Restrictions. Tenant shall abide by and shall promptly observe and comply with, at its sole cost and expense, all Laws and Private Restrictions respecting Tenant's use and occupancy of the Leased Premises, the Building, the Outside Areas, the Property, or the Project, including, without limitation, building codes, the Americans With Disabilities Act and the rules and regulations promulgated thereunder, and all Laws governing the use and/or disposal of hazardous materials, and shall defend with competent counsel, indemnify and hold Landlord harmless from any claims, damages or liability resulting from Tenant's failure to so abide, observe, or comply. Tenant's obligations hereunder shall survive the expiration or sooner termination of this Lease.

4.7 Compliance With Insurance Requirements. With respect to any insurance policies required or permitted to be carried by Landlord in accordance with the provisions of this Lease, Tenant shall not conduct nor permit any other person to conduct any activities nor keep, store or use (or allow any other person to keep, store or use) any item or thing within the Leased Premises, the Building, the Outside Areas, the Property, or the Project which (i) is prohibited under the terms of any such policies, (ii) could result in the termination of the coverage afforded under any of such policies, (iii) could give to the insurance carrier the right to cancel any of such policies, or (iv) could cause an increase in the rates (over standard rates) charged for the coverage afforded under any of such policies. Tenant shall comply with all requirements of any insurance company, insurance underwriter, or Board of Fire Underwriters which are necessary to maintain, at standard rates, the insurance coverages carried by either Landlord or Tenant pursuant to this Lease.

4.8 Landlord's Right To Enter. Landlord and its agents shall have the right to enter (A) the elevator lobby, stairwells, or service elevators within the Leased Premises, and/or onto the roof of the Building, without advance notice to Tenant but with notice to be provided after such entry, and (B) any other portion of the Leased Premises during normal business hours after giving Tenant reasonable notice and subject to Tenant's reasonable security measures for the purpose of (i) inspecting the same; (ii) showing the Leased Premises to prospective purchasers, mortgagees or tenants; (iii) making necessary alterations, additions or repairs; and (iv) performing any of

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Tenant's obligations when Tenant has failed to do so. Landlord shall have the right to enter the Leased Premises during normal business hours (or as otherwise agreed), subject to Tenant's reasonable security measures, for purposes of supplying any maintenance or services agreed to be supplied by Landlord. Landlord shall have the right to enter the Outside Areas during normal business hours for purposes of (i) inspecting the exterior of the Building and the Outside Areas; (ii) posting notices of nonresponsibility (and for such purposes Tenant shall provide Landlord at least thirty (30) days' prior written notice of any work to be performed on the Leased Premises); and (iii) supplying any services to be provided by Landlord. Any entry into the Leased Premises or the Outside Areas obtained by Landlord in accordance with this paragraph shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive of Tenant from the Leased Premises or any portion thereof.

4.9 Use Of Outside Areas. Tenant, in its use of the Outside Areas, shall at all times ensure that it and its employees, agents, contractors, invitees, and licensees shall keep the Outside Areas free and clear of all materials, equipment, debris, trash (except within existing enclosed trash areas), inoperable vehicles, and other items which are not specifically permitted by Landlord to be stored or located thereon by Tenant. If, in the opinion of Landlord, Tenant's employees, agents, contractors, invitees, or licensees are using any of the Outside Areas for a use that is not permitted under this Lease by reason of, or under claim of, the express or implied authority or consent of Tenant, then Tenant, upon demand of Landlord, shall restrain, to the fullest extent then allowed by Law, such unauthorized use, and shall initiate such appropriate proceedings as may be required to so restrain such use. Landlord reserves the right to grant easements and access rights to others for use of the Outside Areas and shall not be liable to Tenant for any diminution in Tenant's right to use the Outside Areas as a result so long as such actions do not unreasonably interfere with Tenant's use of or access to the Leased Premises or its parking rights granted hereunder.

4.10 Environmental Protection. Tenant's obligations under this Paragraph 4.10 shall survive the expiration or termination of this Lease.

(a) As used herein, the term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following

statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant," or "solid waste" in the (a) Comprehensive Environmental Response, Compensation and Liability Act of 1990 ("CERCLA" or "Superfund"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Section 9601 et seq., (b) Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq., (c) Federal Water Pollution Control Act ("FSPCA"), 33 U.S.C. Section 1251 et seq., (d) Clean Air Act ("CAA"), 42 U.S.C. Section 7401 et seq., (e) Toxic Substances Control Act ("TSCA"), 14 U.S.C. Section 2601 et seq., (f) Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., (g) Carpenter-Presley-Tanner Hazardous Substance Account Act ("California Superfund"), Cal. Health & Safety Code Section 25300 et seq., (h) California Hazardous Waste Control Act, Cal. Health & Safety code Section 25100 et seq., (i) Porter-

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Cologne Water Quality Control Act ("Porter-Cologne Act"), Cal. Water Code Section 13000 et seq., (j) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety codes Section 25220 et seq., (k) Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), Cal. Health & Safety code Section 25249.5 et seq., (l) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety code Section 25280 et seq., (m) Air Resources Law, Cal. Health & Safety Code Section 39000 et seq., and (n) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other biohazardous wastes and substances, materials and wastes which are, or in the future become, regulated under applicable Laws for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, (vii) radioactive materials and waste, and (viii) materials and wastes that are harmful to or may threaten human health, ecology or the environment.

(b) Notwithstanding anything to the contrary in this Lease, Tenant, at its sole cost, shall comply with all Laws relating to the storage, use and disposal of Hazardous Materials; provided, however, that unless caused by Tenant, Tenant shall not be responsible for contamination of the Leased Premises by Hazardous Materials existing as of the Lease Commencement Date. Tenant shall not store, use or dispose of any Hazardous Materials; provided, however, that if Landlord and Owner, in their sole discretion, approve the same, then Tenant may store, use and dispose of those Hazardous Materials listed in a Hazardous Materials management plan ("HMMP") which Tenant shall deliver to Landlord upon execution of this Lease and update at least annually with Landlord ("Permitted Materials") which may be used, stored and disposed of provided (i) such Permitted Materials are used, stored, transported, and disposed of in strict compliance with applicable laws, (ii) such Permitted Materials shall be limited to the materials listed on and may be used only in the quantities specified in the HMMP, and (iii) Tenant shall provide Landlord with copies of all material safety data sheets and other documentation required under applicable Laws in connection with Tenant's use of Permitted Materials as and when such documentation is provided to any regulatory authority having jurisdiction, and (iv) in no event shall Tenant cause or permit anyone for whom Tenant is responsible to discharge into the plumbing or sewage system of the Building or onto the land underlying or adjacent to the Building any Hazardous Materials. Tenant shall be solely responsible for and shall defend, indemnify, and hold Landlord and Owner and their agents harmless from and against all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with Hazardous Materials on or emanating from the Leased Premises to the extent caused by Tenant; provided that Tenant shall not be responsible for and, such indemnity does not extend to contamination of the Leased Premises by Hazardous Materials resulting from the gross negligence or willful misconduct of Landlord or Owner. If the presence of Hazardous Materials on the Leased Premises caused or permitted by Tenant results in contamination or deterioration of water or soil, then Tenant shall promptly take any and all action necessary to clean up such contamination, but the foregoing shall in no event be deemed to constitute permission by Landlord to allow the presence of such Hazardous Materials. Tenant shall further be solely responsible for, and shall defend, indemnify, and hold Landlord and

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Owner and their agents harmless from and against all claims, costs and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with any removal, cleanup and restoration work and materials required hereunder to remedy any contamination of the Leased Premises and other

property caused by Tenant and to return the Leased Premises and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials; provided that Tenant shall not be responsible for and, such indemnity does not extend to claims, costs and liabilities arising out of or in connection with any work required to remedy any contamination of the Leased Premises resulting from the gross negligence or willful misconduct of Landlord or Owner.

(c) Upon termination or expiration of the Lease, Tenant at its sole expense shall cause all Hazardous Materials placed in or about the Leased Premises, the Building, the Property and/or the Project by Tenant, its agents, contractors, or invitees, and all installations (whether interior or exterior) made by or on behalf of Tenant relating to the storage, use, disposal or transportation of Hazardous Materials, to be removed from the Property and/or the Project and transported for use, storage or disposal in accordance and compliance with all Laws and other requirements respecting Hazardous Materials used or permitted to be used by Tenant. Tenant shall apply for and shall obtain from all appropriate regulatory authorities (including any applicable fire department or regional water quality control board) all permits, approvals and clearances necessary for the closure of the Property and/or the Project and shall take all other actions as may be required to complete the closure of the Property and/or the Project. In addition, if Tenant, its agents, contractors, or invitees are responsible for the presence of Hazardous Materials in or about the Leased Premises, the Building, the Property or the Project, then, prior to vacating the Leased Premises, Tenant shall undertake and submit to Landlord an environmental site assessment from an environmental consulting company acceptable to Landlord which site assessment shall evidence Tenant's compliance with this Paragraph 4.10.

(d) At any time prior to expiration of the Lease term, subject to reasonable prior notice and Tenant's reasonable security requirements and provided such activities do not unreasonably interfere with the conduct of Tenant's business at the Leased Premises, Landlord shall have the right to enter in and upon the Property, Building and Leased Premises in order to conduct appropriate tests of water and soil to determine whether levels of any Hazardous Materials in excess of legally permissible levels has occurred. Landlord shall furnish copies of all such test results and reports to Tenant and, at Tenant's option and cost, shall permit split sampling for testing and analysis by Tenant. Such testing shall be at Tenant's expense if Landlord has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or ground water in, on, under, or about the Project, the Property, the Building or the Leased Premises, which has been caused by or resulted from the activities of Tenant, its agents, contractors, or invitees.

(e) Landlord may voluntarily cooperate in a reasonable manner with the efforts of all governmental agencies in reducing actual or potential environmental damage. Tenant shall not be entitled to terminate this Lease or to any reduction in or abatement of rent by reason of such compliance or cooperation except to the extent such environmental damage unreasonably interferes with Tenant's use and occupancy of the Leased Premises. Tenant agrees at all times to cooperate fully with the requirements and recommendations of governmental agencies regulating, or otherwise involved in, the protection of the environment.

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4.11 Construction Activities. Tenant acknowledges that there may be other construction occurring on the Property or the Project now and in the future, including, but not limited to, the grading of land and the construction of buildings, parking lots, parking garages, roadways, and other structures, and improvements ancillary thereto. So long as such construction activities do not unreasonably interfere with Tenant's access to, use or occupancy of the Leased Premises, Tenant will not object thereto, will not seek to impose any restriction or limitation thereon, will not assert any challenge thereto, and will at all times cooperate with Landlord in obtaining and maintaining any and all necessary government approvals and permits at no cost to Tenant. Tenant further acknowledges that there will, necessarily, be some disruption in the Project and of the business to be conducted by Tenant in the Leased Premises, including, but not limited to, noise, dust, interruption and re-routing of traffic, dislocation of parking, construction traffic, sidewalk superintending, and the like. So long as such disruptions do not unreasonably interfere with Tenant's access to, use or occupancy of the Leased Premises, Tenant hereby accepts said disruptions as a necessary and normal part of the above-described grading and construction and hereby waives any and all claims for damages resulting from the same, or resulting from the interruption or diminution of Tenant's business, or in any other manner resulting from or proximately caused by such grading or by the construction of such buildings, parking lots, parking garages, roadways, and other structures, and improvements ancillary thereto, and further waives any claims for injunctive relief and any other relief that might impede or interfere with the construction or renovation thereof. Tenant agrees that Landlord may amend or modify the Rules and Regulations to address issues relating to such construction activities and the orderly conduct of thereof, and Tenant hereby agrees to comply therewith; provided, however, that in no event shall the Rules and Regulations be amended in a manner that unreasonably

interferes with Tenant's use or occupancy of the Leased Premises or its rights otherwise granted hereunder.

4.12 Rules And Regulations. Landlord shall have the right from time to time to establish rules and regulations and/or amendments or additions thereto (collectively, "Rules and Regulations"), respecting the use of the Leased Premises, the Outside Areas, the Property, and the Project for the care and orderly management of thereof; provided, however, that in no event shall the Rules and Regulations be amended in a manner that unreasonably interferes with Tenant's use or occupancy of the Leased Premises or its rights otherwise granted hereunder. A copy of the present Rules and Regulations is attached hereto as Exhibit F. Tenant shall comply with the Rules and Regulations. Upon delivery to Tenant of a copy of any reasonable amendments or additions to the Rules and Regulations, Tenant shall also comply therewith. A violation by Tenant of any of such Rules and Regulations shall constitute a breach by Tenant under this Lease. If there is a conflict between the Rules and Regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall have no duty to enforce the Rules and Regulations against, nor shall Landlord be responsible or liable to Tenant for the violation of such Rules and Regulations by, any other tenant of the Property unless said failure unreasonably interferes with Tenant's rights hereunder.

4.13 Reservations. Landlord reserves the right from time to time to grant, without the consent or joinder of Tenant, such easements, rights of way and dedications that Landlord deems necessary, and to cause the recordation of parcel maps and covenants, conditions, and restrictions, so long as such easements, rights of way and dedications, maps, covenants, conditions and restrictions do not unreasonably interfere with the use of the Leased Premises by Tenant or its rights granted hereunder.

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#### ARTICLE 5

##### REPAIRS, MAINTENANCE, SERVICES AND UTILITIES

5.1 Repair And Maintenance. Except in the case of damage to or destruction of the Leased Premises, the Building, the Outside Areas, the Property, or the Project caused by an act of God or other peril, in which case the provisions of Article 10 shall control, the parties shall have the following obligations and responsibilities with respect to the repair and maintenance of the Leased Premises, the Building, the Outside Areas, the Property, and the Project.

(a) Landlord's and Tenant's Obligations. Landlord shall, at all times during the Lease Term, keep and maintain in good order, condition and repair the Leased Premises and every part thereof including, without limiting the generality of the foregoing, (i) all interior walls, floors and ceilings, (ii) all windows, doors and skylights, (iii) all electrical wiring, conduits, connectors and fixtures, (iv) all plumbing, pipes, sinks, toilets, faucets and drains, (v) all lighting fixtures, bulbs and lamps and all heating, ventilating and air conditioning equipment, and (vi) all entranceways to the Leased Premises. Any costs incurred by Landlord pursuant to the foregoing sentence shall be included as part of the costs described under subsection (i)(B) of Section 13.12(c) relating to Property Maintenance Cost. Notwithstanding the foregoing, Tenant shall, at its sole cost and expense, repair all damage to the Leased Premises, the Building, the Outside Areas, the Property, or the Project caused by the activities of Tenant, its employees, invitees or contractors promptly following written notice from Landlord to so repair such damages.

(b) Landlord's Obligations, Building and Building Systems. Landlord shall, at all times during the Lease Term, maintain in good condition and repair the foundation, roof structure, load-bearing and exterior walls of the Building, and those Building elevators, electrical, plumbing, and life safety (and Building central heating, ventilating, and air conditioning) systems or components thereof which serve the Building but which do not serve, or are not identifiable with, the Leased Premises or the premises leased to other building tenants. Landlord shall hire a licensed roofing contractor to regularly and periodically inspect and perform required maintenance on the roof of the Building, and a licensed heating, ventilating and air conditioning contractor to regularly and periodically inspect and perform required maintenance on the heating, ventilating and air conditioning equipment and systems serving the Leased Premises. The provisions of this subparagraph (b) shall in no way limit the right of Landlord to charge to Tenant, as Additional Rent pursuant to Article 3 (to the extent permitted pursuant to Article 3), the costs incurred by Landlord in performing such maintenance and/or making such repairs.

5.2 Utilities and Services. Landlord will furnish to the Leased Premises during the period from 6:00 a.m. to 8:00 p.m., Monday through Friday, and 6:00 a.m. to 12 p.m. on Saturday, except for New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas and such other holidays as are generally recognized in San Francisco, California (hereafter, "Building Standard Hours"), and subject to rules and regulations from time to time established by Landlord: heating, air conditioning and ventilation in amounts required, in Landlord's reasonable judgment, for the normal use and

occupancy of the Leased Premises, provided that Landlord shall comply with ASHRAE . Tenant shall pay Landlord the amount of

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Landlord's then current hourly charge at cost with no mark-up for Building standard HVAC usage during any times other than Building Standard Hours. Notwithstanding anything to the contrary herein, Landlord will furnish twenty-four (24) hours a day, seven (7) days a week HVAC to Tenant's server room. Tenant must provide a minimum of 24 hours advance notice to Landlord, as to what after-hours usage Tenant will require.

(a) Subject to subparagraphs (c) and (d) below, Landlord will furnish to the Leased Premises (including Tenant's server room) twenty-four (24) hours a day, seven (7) days a week: (a) elevator service, (b) electric current in amounts required for normal lighting by building standard overhead fluorescent fixtures and for Tenant's computers, electronic data processing machines, copying machines and other office equipment, located in the Leased Premises, and (c) water for lavatory and drinking purposes. In addition, Landlord shall furnish to Tenant janitorial service during the times and in the manner that such services are customarily furnished in comparable office buildings in the area; provided that in no event shall Landlord be obligated to furnish janitorial service on Saturdays, Sundays, or legal holidays. It is understood that subject to subparagraphs (c) and (d) below, such elevator service, electric current and water will be available twenty-four (24) hours a day.

(b) In the event any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory controls or guidelines on Landlord or the Building or any part thereof relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile emissions or the provision of any other utility or service provided with respect to this Lease, or in the event Landlord is required by law to make alterations or to perform maintenance with respect to, any part of the Building in order to comply with such mandatory controls, or guidelines, such compliance, the making of such alterations and/or the performance of such maintenance shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Monthly Rent and Additional Rent reserved hereunder, or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant.

(c) Without the prior written consent of Landlord, which Landlord may refuse in its sole discretion, the electrical current available to the Leased Premises for power (excluding the central heating, air conditioning, ventilating system and standard overhead lighting) shall at no time exceed a connected load of 27,000 watts at 277/480 volts and 154,688 watts at 120/208 volts. Without the prior written consent of Landlord, which Landlord may refuse in its sole discretion, Tenant shall not: (a) connect or use any electrical equipment that exceeds the capacity of the Building electrical system; (b) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed and without the use of any device intended to increase the plug capacity of any electrical outlet; or (c) maintain at any time an electrical demand load in excess of 116,016 watts. If Tenant's electrical circuitry requires more than one 277 volt, 20 amp single phase breaker per three kilowatts of connected load of electrical current or one 120 volt, 20 amp single phase breaker per 1.2 kilowatts of connected load of electrical current, Landlord shall install at Tenant's expense such additional breakers and transformers as shall be reasonably required for such circuitry. At any time that Tenant's use of electricity exceeds 50,692 kilowatt hours per month, Landlord shall have the right to impose a reasonable charge, as determined by Landlord, for such excess use.

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(d) Tenant acknowledges that the heating, air conditioning and ventilating system of the Building is designed to operate efficiently while electrical equipment such as customary lamps, computers and other small fractional horsepower office machines are being used in the Leased Premises and while the Leased Premises are occupied in any Building System zone per the floor space plan provided. If the temperature otherwise maintained in any portion of the Building or the Leased Premises by the heating, air conditioning and ventilating system of the Building is affected by (a) Tenant's use of any lights, machines or equipment (including, without limitation, computers, electronic data processing machines and copying machines), or (b) the occupancy, as defined by the floor space plan, of the Leased Premises is exceeded or (c) an electrical load that generates heat in excess of 527,948 BTU / hour, Landlord shall have the right, unless Tenant ceases and desists from such usage or excess occupancy within five (5) days after written notice from Landlord, to install any machinery and equipment that Landlord reasonably deems necessary to restore temperature balance, including, without limitation, modifications to the standard air conditioning equipment, and the cost thereof, including the cost of installation and any additional cost of operation and maintenance incurred thereby, shall be paid by Tenant to Landlord within thirty (30) days after

receipt of demand therefore by Landlord.

(e) Any costs incurred by Landlord to provide the utilities and services pursuant to this section 5.2 shall be included as part of the costs described under subsection (i) (B) of Section 13.12(c) relating to Property Maintenance Cost.

5.3 Access Control. Except for providing Tenant with a card based access system to the Leased Premises, which Landlord shall be responsible for repairing and maintaining during the Lease Term, Tenant acknowledges that Landlord has not undertaken any duty whatsoever to provide security for the Leased Premises, the Building, the Outside Areas, the Property, or the Project and, accordingly, Landlord is not responsible for the security of same or the protection of Tenant's property or Tenant's employees, invitees or contractors. To the extent Tenant determines that such security or protection services are advisable or necessary, Tenant shall arrange for and pay the costs of providing same, and shall cause such security or protection services to be coordinated with any similar services, if any, being provided from time to time with respect to any other portions of the Project. Landlord shall staff the Building lobby during Building Hours. Any costs incurred by Landlord to meet its obligations pursuant to this section shall be included as part of the costs described under subsection (i) (B) of Section 13.12(c) relating to Property Maintenance Cost.

5.4 Energy And Resource Consumption; Traffic Management System. So long as Landlord does not unreasonably interfere with Tenant's use and occupancy of the Leased Premises, Landlord may voluntarily cooperate in a reasonable manner with the efforts of governmental or quasi-governmental agencies and/or utility suppliers in reducing energy or other resource consumption within, and/or vehicular traffic to and from, the Property or the Project, and the cost incurred by Landlord in connection therewith shall be included as part of the costs described under subsection (i) (B) of Section 13.12(c) relating to Property Maintenance Cost. Tenant shall not be entitled to terminate this Lease or to any reduction in or abatement of rent by reason of such compliance or cooperation. Tenant agrees at all times to cooperate fully with Landlord and to abide by all reasonable rules established by Landlord (i) in order to maximize the efficient operation of the electrical, heating, ventilating and air conditioning systems and all other energy or other resource consumption systems within the Property, and/or (ii) in order to

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comply with the requirements or recommendations of utility suppliers and governmental or quasi-governmental agencies regulating the consumption of energy and/or other resources, and/or (iii) in order to comply with any requirements, recommendations, or guidelines relating to traffic management.

5.5 Limitation Of Landlord's Liability. Landlord shall not be liable to Tenant for injury to Tenant, its employees, agents, invitees or contractors, damage to Tenant's property or loss of Tenant's business or profits, nor shall Tenant be entitled to terminate this Lease or to any reduction in or abatement of rent by reason of (i) Landlord's failure to provide security services or systems within the Property for the protection of the Leased Premises, the Building or the Outside Areas, or the protection of Tenant's property or Tenant's employees, invitees, agents or contractors, except as required under Section 5.3 above or (ii) Landlord's failure to perform any maintenance or repairs to the Leased Premises, the Building, the Outside Areas, the Property, or the Project until Tenant shall have first notified Landlord, in writing, of the need for such maintenance or repairs, and then only after Landlord shall have had a reasonable period of time following its receipt of such notice within which to perform such maintenance or repairs, or (iii) any failure, interruption, rationing or other curtailment in the supply of water, electric current, gas or other utility service to the Leased Premises, the Building, the Outside Areas, the Property, or the Project from whatever cause (other than Landlord's gross negligence or willful misconduct), or (iv) the unauthorized intrusion or entry into the Leased Premises by third parties (other than Landlord).

## ARTICLE 6

### ALTERATIONS AND IMPROVEMENTS

6.1 By Tenant. Tenant shall not make any alterations to or modifications of the Leased Premises or construct any improvements within the Leased Premises until Landlord shall have first approved, in writing, the plans and specifications therefore, which approval may not be unreasonably conditioned, delayed (which in this case shall mean beyond fifteen (15) business days), or withheld. Landlord's approval of Tenant's plans and specifications shall create no liability on the part of Landlord for their completeness, sufficiency, or compliance with Laws or Private Restrictions. Tenant's written request shall also contain a request (in bold, all capital letters) for Landlord to elect whether or not it will require Tenant to remove the subject alterations, modifications or improvements at the expiration or earlier termination of this Lease. If such additional request is not included, Landlord may make such election at the expiration or earlier termination of this Lease (and for

purposes of Tenant's removal obligations set forth in Paragraph 2.6 above, Landlord shall be deemed to have made the election at the time the alterations, modifications or improvements were completed). All such modifications, alterations or improvements, once so approved, shall be made, constructed or installed by Tenant at Tenant's expense (including all permit fees and governmental charges related thereto), using a licensed contractor first approved by Landlord, in substantial compliance with the Landlord-approved plans and specifications therefore. All work undertaken by Tenant shall be done in accordance with all Laws and in a good and workmanlike manner using new materials of good quality. Tenant shall not commence the making of any such modifications or alterations or the construction of any such improvements until (i) all required governmental approvals and permits shall have been obtained, (ii) all requirements regarding insurance imposed by this Lease have

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been satisfied, (iii) Tenant shall have given Landlord at least five (5) business days prior written notice of its intention to commence such work so that Landlord may post and file notices of non-responsibility, and (iv) if requested by Landlord, Tenant shall have obtained contingent liability and broad form builder's risk insurance in an amount satisfactory to Landlord in its reasonable discretion to cover any perils relating to the proposed work not covered by insurance carried by Tenant pursuant to Article 9. In no event shall Tenant make any modification, alterations or improvements whatsoever to the Outside Areas or the exterior or structural components of the Building including, without limitation, any cuts or penetrations in the floor, roof or exterior walls of the Leased Premises. As used in this Article, the term "modifications, alterations and/or improvements" shall include, without limitation, the installation of additional electrical outlets, overhead lighting fixtures, drains, sinks, partitions, doorways, or the like.

6.2 Ownership Of Improvements. All modifications, alterations and improvements made or added to the Leased Premises by Tenant (other than Tenant's inventory, equipment, movable furniture, wall decorations and trade fixtures) shall be deemed real property and a part of the Leased Premises, but shall remain the property of Tenant during the Lease Term and Tenant hereby covenants and agrees not to grant a security interest in any such items to any party other than Landlord. Any such modifications, alterations or improvements, once completed, shall not be altered or removed from the Leased Premises during the Lease Term without Landlord's written approval first obtained in accordance with the provisions of Paragraph 6.1 above. At the expiration or sooner termination of this Lease, all such modifications, alterations and improvements other than Tenant's inventory, equipment, movable furniture, wall decorations and trade fixtures, shall automatically become the property of Landlord and shall be surrendered to Landlord as part of the Leased Premises as required pursuant to Article 2, unless Landlord shall require Tenant to remove any of such modifications, alterations or improvements in accordance with the provisions of Article 2, in which case Tenant shall so remove same. Landlord shall have no obligations to reimburse Tenant for all or any portion of the cost or value of any such modifications, alterations or improvements so surrendered to Landlord. All modifications, alterations or improvements which are installed or constructed on or attached to the Leased Premises by Landlord and/or at Landlord's expense shall be deemed real property and a part of the Leased Premises and shall be property of Landlord. All lighting, plumbing, electrical, heating, ventilating and air conditioning fixtures, partitioning, window coverings, wall coverings and floor coverings installed by Tenant shall be deemed improvements to the Leased Premises and not trade fixtures of Tenant.

6.3 Alterations Required By Law. Tenant shall make all modifications, alterations and improvements to the Leased Premises, at its sole cost, that are required by any Law because of (i) Tenant's use or occupancy of the Leased Premises, the Building, the Outside Areas, the Property, or the Project, (ii) Tenant's application for any permit or governmental approval, or (iii) Tenant's making of any modifications, alterations or improvements to or within the Leased Premises.

6.4 Liens. Tenant shall keep the Property and every part thereof free from any lien, and shall pay when due all bills arising out of any work performed, materials furnished, or obligations incurred by Tenant, its agents, employees or contractors relating to the Property. If any such claim of lien is recorded against Tenant's interest in this Lease, the Property or any part thereof, Tenant shall bond against, discharge or otherwise cause such lien to be entirely released within

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thirty (30) days after receipt of notice that the same has been recorded. Tenant's failure to do so shall be conclusively deemed a material default under the terms of this Lease.

#### ARTICLE 7

#### ASSIGNMENT AND SUBLETTING BY TENANT



7.1 By Tenant. Tenant shall not sublet the Leased Premises or any portion thereof or assign its interest in this Lease, whether voluntarily or by operation of Law, or permit the occupancy by other than Tenant, its employees and contractors, without Landlord's prior written consent which shall not be unreasonably conditioned, delayed or withheld. Any subletting or assignment without Landlord's prior written consent, at Landlord's election, shall constitute a default by Tenant under the terms of this Lease. The acceptance of rent by Landlord from any person or entity other than Tenant, or the acceptance of rent by Landlord from Tenant with knowledge of a violation of the provisions of this paragraph, shall not be deemed to be a waiver by Landlord of any provision of this Article or this Lease or to be a consent to any subletting by Tenant or any assignment of Tenant's interest in this Lease. Without limiting the circumstances in which it may be reasonable for Landlord to withhold its consent to an assignment or subletting, Landlord and Tenant acknowledge that it shall be reasonable for Landlord to withhold its consent in the following instances:

- (a) the proposed assignee or sublessee is a governmental agency;
- (b) in Landlord's reasonable judgment, the use of the Leased Premises by the proposed assignee or sublessee would involve occupancy other than for a Permitted Use, would entail any alterations which would lessen the value of the leasehold improvements in the Leased Premises, or would require increased services by Landlord;
- (c) in Landlord's reasonable judgment, the financial worth of the proposed assignee is less than that of Tenant or does not meet the credit standards applied by Landlord;
- (d) the proposed assignee or sublessee (or any of its affiliates) has been in material default under a lease, has been in litigation with a previous landlord, or in the ten years prior to the assignment or sublease has filed for bankruptcy protection, has been the subject of an involuntary bankruptcy, or has been adjudged insolvent;
- (e) Landlord has experienced a previous default by or is or has been in litigation with the proposed assignee or sublessee
- (f) in Landlord's reasonable judgment, the Leased Premises, or the relevant part thereof, will be used in a manner that will violate any negative covenant as to use contained in this Lease;
- (g) the use of the Leased Premises by the proposed assignee or sublessee will violate any applicable law, ordinance or regulation;
- (h) the proposed assignee or sublessee is, as of the date of the proposed assignment or subletting, a tenant in the Building or the Project, or Landlord and such proposed assignee or

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sublessee have, at or prior to such time, been in communication regarding lease of space in the Project;

- (i) the proposed assignment or sublease fails to include all of the terms and provisions required to be included therein pursuant to this Article 7;
- (j) Tenant is then in default of any obligation of Tenant under this Lease or Tenant has defaulted under this Lease beyond any applicable cure period on three or more occasions; or
- (k) the proposed assignee or sublessee is deemed, in Landlord's reasonable judgment, to be competitive in any way (including but not limited to competition by product type, labor usage, or employee pool) by Landlord; or
- (l) the proposed assignment or sublease is at below market rates, taking into consideration all relevant factors; or
- (m) in the case of a subletting of less than the entire Leased Premises, if the subletting would result in the division of the Leased Premises into more than two subparcels or would require improvements to be made outside of the Leased Premises.

7.2 Merger, Reorganization, or Sale of Assets. Except for a Permitted Transfer (as defined below), other dissolution, spin-off or other disposition, merger, consolidation or other reorganization of Tenant, or the sale, transfer or other change in the aggregate over the Lease Term of more than 49% of the capital stock, partnership or membership interests, or other equity interests, of Tenant), or the sale or transfer of a material portion of the assets of Tenant, shall be deemed a voluntary assignment of Tenant's interest in this Lease; provided, however, that the foregoing shall not apply so long as Tenant is an entity whose outstanding stock is listed on a recognized security exchange, or if at least 80% of its voting stock is owned by another entity, the

voting stock of which is so listed. Notwithstanding anything herein to the contrary, Tenant may assign its entire interest under this Lease to a successor to Tenant by purchase, merger, consolidation or reorganization without the consent of Landlord, provided that all of the following conditions are satisfied (a "Permitted Transfer"): (1) Tenant is not in default under this Lease; (2) Tenant's successor shall own all or substantially all of the assets of Tenant; (3) Tenant's successor shall have a net worth which is at least equal to the greater of Tenant's net worth at the date of this Lease or Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization; and (4) Tenant shall give Landlord written notice at least thirty (30) days prior to the effective date of the proposed purchase, merger, consolidation or reorganization. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, Tenant's successor shall sign a commercially reasonable form of assumption agreement. If Tenant is a partnership or limited liability company, then in addition to the foregoing, a withdrawal or change, voluntary, involuntary or by operation of Law, of any general partner or managing member or manager, or the dissolution of the partnership or the limited liability company, shall be deemed a voluntary assignment of Tenant's interest in this Lease. Upon Landlord's reasonable request from time to time, Tenant shall promptly provide Landlord with a statement certified by the Tenant's chief operating officer, which shall provide the following information: (a) the names of all of Tenant's shareholders, partners or members and their ownership interests

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at the time thereof, provided Tenant's shares are not publicly traded; (b) the state in which Tenant is incorporated, formed or organized; (c) the location of Tenant's principal place of business; (d) any information that is made public regarding a material change in the ownership structure of Tenant, including, without limitation, a merger or consolidation; and (e) any other public information regarding Tenant's ownership that Landlord reasonably requests.

7.3 Landlord's Election. If Tenant shall desire to assign its interest under the Lease or to sublet the Leased Premises, Tenant must first notify Landlord, in writing, of its intent to so assign or sublet, at least thirty (30) days in advance of the date it intends to so assign its interest in this Lease or sublet all or any portion of the Leased Premises but not sooner than one hundred eighty (80) days in advance of such date, specifying in detail the terms of such proposed assignment or subletting, including the name of the proposed assignee or sublessee, the property assignee's or sublessee's intended use of the Leased Premises, current financial statements (including a balance sheet, income statement and statement of cash flow, all prepared in accordance with generally accepted accounting principles) of such proposed assignee or sublessee, the form of documents to be used in effectuating such assignment or subletting and such other information as Landlord may reasonably request. Landlord shall have a period of thirty (30) days following receipt of such notice and the required information within which to do one of the following: (i) consent to such requested assignment or subletting subject to Tenant's compliance with the conditions set forth in Paragraph 7.4 below, or (ii) refuse to so consent to such requested assignment or subletting, provided that such consent shall not be unreasonably conditioned, delayed or refused; or (iii) terminate this Lease, at Landlord's sole option, as to only such portion of the Leased Premises as is the subject of the proposed assignment or subletting as of the proposed effective date of such assignment or sublease. During such thirty (30) day period, Tenant covenants and agrees to supply to Landlord, upon request, all necessary or relevant information which Landlord may reasonably request respecting such proposed assignment or subletting and/or the proposed assignee or sublessee.

7.4 Conditions To Landlord's Consent. If Landlord elects to consent, or shall have been ordered to so consent by a court of competent jurisdiction, to such requested assignment or subletting, such consent shall be expressly conditioned upon the occurrence of each of the conditions below set forth, and any purported assignment or subletting made or ordered prior to the full and complete satisfaction of each of the following conditions shall be void and, at the election of Landlord, which election may be exercised at any time following such a purported assignment or subletting but prior to the satisfaction of each of the stated conditions, shall constitute a material default by Tenant under this Lease until cured by satisfying in full each such condition by the assignee or sublessee. The conditions are as follows:

(a) Landlord having approved in form and substance the assignment or sublease agreement and any ancillary documents, which approval shall not be unreasonably conditioned, delayed or withheld by Landlord if the requirements of this Article 7 are otherwise complied with.

(b) Each such sublessee or assignee having agreed, in writing satisfactory to Landlord and its counsel and for the benefit of Landlord, to assume, to be bound by, and to perform the obligations of this Lease to be performed by Tenant which relate to space being subleased.

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(c) Tenant having fully and completely performed all of its obligations under the terms of this Lease through and including the date of such assignment or subletting.

(d) Tenant having reimbursed to Landlord all reasonable costs and reasonable attorneys' fees incurred by Landlord in conjunction with the processing and documentation of any such requested subletting or assignment.

(e) Tenant having delivered to Landlord a complete and fully-executed duplicate original of such sublease agreement or assignment agreement (as applicable) and all related agreements.

(f) Tenant having paid, or having agreed in writing to pay as to future payments, to Landlord seventy-five percent (75%) of all assignment consideration or excess rentals to be paid to Tenant or to any other on Tenant's behalf or for Tenant's benefit for such assignment or subletting as follows:

(i) If Tenant assigns its interest under this Lease and if all or a portion of the consideration for such assignment is to be paid by the assignee at the time of the assignment, Tenant shall have paid to Landlord and Landlord shall have received an amount equal to seventy-five percent (75%) of the assignment consideration so paid or to be paid (whichever is the greater) at the time of the assignment by the assignee; or

(ii) If Tenant assigns its interest under this Lease and if Tenant is to receive all or a portion of the consideration for such assignment in future installments, that Tenant and Tenant's assignee shall have entered into a written agreement with and for the benefit of Landlord satisfactory to Landlord and its counsel whereby Tenant and Tenant's assignee jointly agree to pay to Landlord an amount equal to seventy-five percent (75%) of all such future assignment consideration installments to be paid by such assignee as and when such assignment consideration is so paid.

(iii) If Tenant subleases the Leased Premises, that Tenant and Tenant's sublessee shall have entered into a written agreement with and for the benefit of Landlord satisfactory to Landlord and its counsel whereby Tenant and Tenant's sublessee jointly agree to pay to Landlord seventy-five percent (75%) of all excess rentals to be paid by such sublessee as and when such excess rentals are so paid.

7.5 Assignment Consideration And Excess Rentals Defined. For purposes of this Article, including any amendment to this Article by way of addendum or other writing, the term "assignment consideration" shall mean all consideration to be provided by or on behalf of the assignee to Tenant or to any other party on Tenant's behalf or for Tenant's benefit in connection with or related to such assignment, after deducting reasonable third party broker costs actually paid by Tenant, if any, but without deduction for any other costs or expenses (including, without limitation, tenant improvements, capital improvements, building upgrades, permit fees, attorneys' fees, and other consultants' fees) incurred by Tenant in connection with such assignment, and the term "excess rentals" shall mean all consideration to be paid by the sublessee to Tenant or to any other party on Tenant's behalf or for Tenant's benefit for the sublease of all or any portion of the Leased Premises in excess of the rent due to Landlord under

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the terms of this Lease for the portion so subleased for the same period, after deducting reasonable third party broker costs actually paid by Tenant, if any, but without deduction for any other costs or expenses (including, without limitation, tenant improvements, capital improvements, building upgrades, permit fees, attorneys' fees, and other consultants' fees) incurred by Tenant in connection with such sublease. Tenant agrees that the portion of any assignment consideration and/or excess rentals arising from any assignment or subletting by Tenant which is to be paid to Landlord pursuant to this Article now is and shall then be the property of Landlord and not the property of Tenant.

7.6 Payments. All payments required by this Article to be made to Landlord shall be made in cash in full as and when they become due. At the time Tenant, Tenant's assignee or sublessee makes each such payment to Landlord, Tenant or Tenant's assignee or sublessee, as the case may be, shall deliver to Landlord an itemized statement in reasonable detail showing the method by which the amount due Landlord was calculated and certified by the person making such statement as true and correct.

7.7 Good Faith. The rights granted to Tenant by this Article are granted in consideration of Tenant's express covenant that all pertinent allocations which are made by Tenant between the rental value of the Leased Premises and the value of any of Tenant's personal property which may be conveyed or leased generally concurrently with and which may reasonably be considered a part of the same transaction as the permitted assignment or subletting shall be made fairly, honestly and in good faith. If Tenant shall breach this covenant, Landlord may immediately declare Tenant to be in default under the terms of this Lease and

terminate this Lease and/or exercise any other rights and remedies Landlord would have under the terms of this Lease in the case of a material default by Tenant under this Lease. In the event Tenant assigns or subleases all or any portion of the Leased Premises at below market rates, it shall be rebuttably presumed that Tenant has engaged in bad faith and that consideration is being provided by the assignee or sublessee in excess of the consideration allocated by Tenant to the Leased Premises or portion thereof which is the subject of the assignment or sublease. Tenant shall have the burden of proof to rebut such presumption.

7.8 Effect Of Landlord's Consent. No subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its personal and primary obligation to pay rent and to perform all of the other obligations to be performed by Tenant hereunder. Consent by Landlord to one or more assignments of Tenant's interest in this Lease or to one or more sublettings of the Leased Premises shall not be deemed to be a consent to any subsequent assignment or subletting. If Landlord shall have been ordered by a court of competent jurisdiction to consent to a requested assignment or subletting, or such an assignment or subletting shall have been ordered by a court of competent jurisdiction over the objection of Landlord, such assignment or subletting shall not be binding between the assignee (or sublessee) and Landlord until such time as all conditions set forth in Paragraph 7.4 above have been fully satisfied (to the extent not then satisfied) by the assignee or sublessee, including, without limitation, the payment to Landlord of all agreed assignment considerations and/or excess rentals then due Landlord. No subtenant shall have any right to assign its sublease or to further sublet any portion of the sublet premises or to permit any portion of the sublet premises to be used or occupied by any other party. If Landlord shall have been ordered by a court of competent jurisdiction to consent to a requested assignment or subletting, or such an assignment or subletting shall have been ordered by a court of competent

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jurisdiction over the objection of Landlord, such assignment or subletting shall not be binding between the assignee (or sublessee) and Landlord until such time as all conditions set forth in Paragraph 7.4 above have been fully satisfied (to the extent not then satisfied) by the assignee or sublessee, including, without limitation, the payment to Landlord of all agreed assignment considerations and/or excess rentals then due Landlord. Upon an event of default while a sublease is in effect, Landlord may collect directly from the sublessee all sums becoming due to Tenant under the sublease and apply this amount against any sums due Landlord by Tenant, and Tenant authorizes and directs any sublessee to make payments directly to Landlord upon notice from Landlord. No direct collection by Landlord from any sublessee shall constitute a novation or release of Tenant or any guarantor, a consent to the sublease or a waiver of the covenant prohibiting subleases.

7.9 Assignment or Sublease to Subsidiary or Affiliate. Notwithstanding the foregoing, Landlord's consent shall not be required in connection with an assignment or sublease by Tenant to an Affiliate (as hereinafter defined) of Tenant, so long as such affiliated assignee's or sublessee's use of the Leased Premises does not materially change. As used in this Paragraph 7.9, the term "Affiliate" shall mean as to an entity, any entity which controls, is controlled by or is under common control with such entity. The term "control" shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the outstanding voting stock of a corporation or other equity interest if such entity is not a corporation.

#### ARTICLE 8

##### LIMITATION ON LANDLORD'S LIABILITY AND INDEMNITY

8.1 Limitation On Landlord's and Owner's Liability And Release. Neither Landlord nor Owner shall be liable to Tenant for, and Tenant hereby releases Landlord and Owner and their officers, directors, shareholders, partners, principals, members, agents, employees, lenders, attorneys, contractors, and consultants from, any and all liability, whether in contract, tort or on any other basis, for any injury to or any damage sustained by Tenant, Tenant's agents, employees, contractors or invitees, any damage to Tenant's property, or any loss to Tenant's business, loss of Tenant's profits or other financial loss of Tenant resulting from or attributable to the condition of, the management of, the repair or maintenance of, the protection of, the supply of services or utilities to, the damage in or destruction of the Leased Premises, the Building, the Property, the Outside Areas, or the Project, including without limitation (i) the failure, interruption, rationing or other curtailment or cessation in the supply of electricity, water, gas or other utility service to the Project, the Property, the Building or the Leased Premises; (ii) the vandalism or forcible entry into the Project, the Property, the Building or the Leased Premises; (iii) the penetration of water into or onto any portion of the Project, the Property, the Building or the Leased Premises; (iv) the failure to provide security and/or adequate lighting in or about the Project, the Property, the Building or the Leased Premises, (v) the existence of any design or construction defects within the Project, the Property, the Building or the Leased Premises; (vi) the failure of any mechanical systems to function properly

(such as the HVAC systems); (vii) the blockage of access to any portion of the Project, the Property, the Building or the Leased Premises, except that Tenant does not so release Landlord, Owner or any such indemnified party from such liability to the extent such damage was proximately caused by Landlord's, Owner's or such indemnified party's gross negligence, willful misconduct, or

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Landlord's failure to perform an obligation expressly undertaken pursuant to this Lease after a reasonable period of time shall have lapsed following receipt of written notice from Tenant to so perform such obligation. In this regard, Tenant acknowledges that it is fully apprised of the provisions of Law relating to releases, and particularly to those provisions contained in Section 1542 of the California Civil Code which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding such statutory provision, and for the purpose of implementing a full and complete release and discharge, Tenant hereby (i) waives the benefit of such statutory provision and (ii) acknowledges that, subject to the exceptions specifically set forth herein, the release and discharge set forth in this paragraph is a full and complete settlement and release and discharge of all claims and is intended to include in its effect, without limitation, all claims which Tenant, as of the date hereof, does not know of or suspect to exist in its favor.

8.2 Tenant's Indemnification Of Landlord and Owner. Tenant shall defend with competent counsel satisfactory to Landlord and Owner, Landlord and Owner and their respective officers, directors, shareholders, partners, principals, members, agents, employees, lenders, attorneys, contractors, and consultants (the "Indemnified Parties") against any claims made or legal actions filed or threatened against any of the Indemnified Parties with respect to the violation of any Law or Private Restriction, or the death, bodily injury, personal injury, property damage, or interference with contractual or property rights suffered by any third party occurring within the Leased Premises, the Building, the Outside Areas, the Property, or the Project, to the extent resulting from Tenant's use or occupancy of the Leased Premises, the Building, the Outside Areas, the Property, or the Project, or resulting from Tenant's activities in or about the Leased Premises, the Building, the Outside Areas, the Property, or the Project, and Tenant shall indemnify and hold the Indemnified Parties harmless from any loss, liability, penalties, or expense whatsoever (including any loss attributable to vacant space which otherwise would have been leased, but for such activities) resulting therefrom, except to the extent proximately caused by the gross negligence or willful misconduct of Landlord or the Indemnified Party. Tenant's obligations under this paragraph shall survive the expiration or sooner termination of this Lease.

## ARTICLE 9

### INSURANCE

9.1 Tenant's Insurance. Tenant shall maintain insurance complying with all of the following:

(a) Tenant shall procure, pay for and keep in full force and effect, at all times during the Lease Term, the following:

(i) Commercial general liability insurance insuring Tenant against liability for personal injury, bodily injury, death and damage to property occurring within the Leased Premises, or resulting from Tenant's use or occupancy of the Leased Premises, the Building, the

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Outside Areas, the Property, or the Project, or resulting from Tenant's activities in or about the Leased Premises, the Outside Areas, the Property, or the Project, with coverage in an amount equal to Tenant's Required Liability Coverage (as set forth in Article 1), which insurance shall contain "blanket contractual liability" and "broad form property damage" endorsements insuring Tenant's performance of Tenant's obligations to indemnify Landlord as contained in this Lease.

(ii) Fire and property damage insurance in "special form" coverage insuring Tenant against loss from physical damage to Tenant's personal property, inventory, trade fixtures and improvements within the Leased Premises with coverage for the full actual replacement cost thereof;

(iii) Business income/extra expense insurance sufficient to pay Base Monthly Rent and Additional Rent for a period of not less than twelve (12) months;

(iv) Plate glass insurance, at actual replacement cost;

(v) Product liability insurance (including, without limitation, if food and/or beverages are distributed, sold and/or consumed within the Leased Premises, to the extent obtainable, coverage for liability arising out of the distribution, sale, use or consumption of food and/or beverages (including alcoholic beverages, if applicable) at the Leased Premises for not less than Tenant's Required Liability Coverage (as set forth in Article 1);

(vi) Workers' compensation insurance (statutory coverage) with employer's liability in amounts not less than \$1,000,000 insurance sufficient to comply with all laws; and

(vii) With respect to making of any alterations or modifications or the construction of improvements or the like undertaken by Tenant, course of construction, commercial general liability, automobile liability and workers' compensation (to be carried by Tenant's contractor), in an amount and with coverage reasonably satisfactory to Landlord.

(b) Each policy of liability insurance required to be carried by Tenant pursuant to this paragraph or actually carried by Tenant with respect to the Leased Premises or the Property: (i) shall, except with respect to insurance required by subparagraph (a)(vii) above, name Landlord, and such others as are designated by Landlord, as additional insureds; (ii) shall be primary insurance providing that the insurer shall be liable for the full amount of the loss, up to and including the total amount of liability set forth in the declaration of coverage, without the right of contribution from or prior payment by any other insurance coverage of Landlord; (iii) shall be in a form satisfactory to Landlord; (iv) shall be carried with companies reasonably acceptable to Landlord with Best's ratings of at least A and (v) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Landlord, and (vi) shall contain a so-called "severability" or "cross liability" endorsement. Each policy of property insurance maintained by Tenant with respect to the Leased Premises or the Property or any property therein (i) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Landlord and (ii) shall contain a waiver and/or a permission to waive by the insurer of any right of subrogation against Landlord, its partners, principals, members, officers, employees, agents and contractors, which might arise by reason of any payment under such policy or by

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reason of any act or omission of Landlord, its partners, principals, members, officers, employees, agents and contractors.

(c) Prior to the time Tenant or any of its contractors enters the Leased Premises, Tenant shall deliver to Landlord, with respect to each policy of insurance required to be carried by Tenant pursuant to this Article, a copy of such policy (appropriately authenticated by the insurer as having been issued, premium paid) or a certificate of the insurer certifying in form satisfactory to Landlord that a policy has been issued, premium paid, providing the coverage required by this paragraph and containing the provisions specified herein. With respect to each renewal or replacement of any such insurance, the requirements of this paragraph must be complied with not less than thirty (30) days prior to the expiration or cancellation of the policies being renewed or replaced. Landlord may, at any time and from time to time, inspect and/or copy any and all insurance policies required to be carried by Tenant pursuant to this Article. If Landlord's Lender, insurance broker, advisor or counsel reasonably determines at any time that the amount of coverage set forth in Paragraph 9.1(a) for any policy of insurance Tenant is required to carry pursuant to this Article is not adequate, then Tenant shall increase the amount of coverage for such insurance to such greater amount as Landlord's Lender, insurance broker, advisor or counsel reasonably deems adequate. In the event Tenant does not maintain said insurance, Landlord may, in its sole discretion and without waiving any other remedies hereunder, procure said insurance and Tenant shall pay to Landlord as additional rent the cost of said insurance plus a ten percent (10%) administrative fee.

9.2 Landlord's Insurance. With respect to insurance maintained by Landlord:

(a) Landlord shall maintain, as the minimum coverage required of it by this Lease, fire and property damage insurance in so-called special form coverage insuring Landlord (and such others as Landlord may designate) against loss from physical damage to the Building with coverage of not less than one hundred percent (100%) of the full actual replacement cost thereof and against loss of rents for a period of not less than six months. Such fire and property damage insurance, at Landlord's election but without any requirements on Landlord's behalf to do so, (i) may be written in so-called "all risk" form, excluding only those perils commonly excluded from such coverage by Landlord's then property damage insurer; (ii) may provide coverage for physical damage to the improvements so insured for up to the entire full actual replacement cost thereof; (iii) may be endorsed to cover loss or damage caused by any additional

perils against which Landlord may elect to insure, including earthquake and/or flood; and/or (iv) may provide coverage for loss of rents for a period of up to twelve months. Landlord shall not be required to cause such insurance to cover any of Tenant's personal property, inventory, and trade fixtures, or any modifications, alterations or improvements made or constructed by Tenant to or within the Leased Premises. Landlord shall use commercially reasonable efforts to obtain such insurance at competitive rates.

(b) Landlord shall maintain commercial general liability insurance insuring Landlord (and such others as are designated by Landlord) against liability for personal injury, bodily injury, death, and damage to property occurring in, on or about, or resulting from the use or occupancy of the Property, or any portion thereof, with combined single limit coverage of at least Ten Million Dollars (\$10,000,000). Landlord may carry such greater coverage as Landlord

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or Landlord's Lender, insurance broker, advisor or counsel may from time to time determine is reasonably necessary for the adequate protection of Landlord, the Property, and the Project.

(c) Landlord may maintain any other insurance which in the opinion of its insurance broker, advisor or legal counsel is prudent in carry under the given circumstances, provided such insurance is commonly carried by owners of property similarly situated and operating under similar circumstances.

9.3 Mutual Waiver Of Subrogation. Landlord hereby releases Tenant, and Tenant hereby releases Landlord and its respective partners, principals, members, officers, agents, employees and servants, from any and all liability for loss, damage or injury to the property of the other in or about the Leased Premises, the Property, or the Project which is caused by or results from a peril or event or happening which is covered by insurance actually carried and in force at the time of the loss by the party sustaining such loss; provided, however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby.

#### ARTICLE 10

##### DAMAGE TO LEASED PREMISES

10.1 Landlord's Duty To Restore. If the Leased Premises, the Building or the Outside Area are damaged by any peril after the Effective Date of this Lease, Landlord shall restore the same, as and when required by this paragraph, unless this Lease is terminated by Landlord pursuant to Paragraph 10.3 or by Tenant pursuant to Paragraph 10.4. If this Lease is not so terminated, then upon the issuance of all necessary governmental permits, Landlord shall commence and diligently prosecute to completion the restoration of the Leased Premises, the Building or the Outside Area, as the case may be, to the extent then allowed by law, to substantially the same condition in which it existed as of the Lease Commencement Date. Landlord's obligation to restore shall be limited to the improvements constructed by Landlord. Landlord shall have no obligation to restore any alterations, modifications or improvements made by Tenant to the Leased Premises or any of Tenant's personal property, inventory or trade fixtures. Upon completion of the restoration by Landlord, Tenant shall forthwith replace or fully repair all of Tenant's improvements constructed by Tenant to like or similar conditions as existed at the time immediately prior to such damage or destruction.

10.2 Insurance Proceeds. All insurance proceeds available from the fire and property damage insurance carried by Landlord shall be paid to and become the property of Landlord. If this Lease is terminated pursuant to either Paragraph 10.3 or 10.4, all insurance proceeds available from insurance carried by Tenant which cover loss of property that is Landlord's property or would become Landlord's property on termination of this Lease shall be paid to and become the property of Landlord, and the remainder of such proceeds shall be paid to and become the property of Tenant. If this Lease is not terminated pursuant to either Paragraph 10.3 or 10.4, all insurance proceeds available from insurance carried by Tenant which cover loss to property that is Landlord's property shall be paid to and become the property of Landlord, and all proceeds available from such insurance which cover loss to property which would only become the property of Landlord upon the termination of this Lease shall be paid to and remain

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the property of Tenant. The determination of Landlord's property and Tenant's property shall be made pursuant to Paragraph 6.2.

10.3 Landlord's Right To Terminate. Landlord shall have the option to terminate this Lease in the event any of the following occurs, which option may be exercised only by delivery to Tenant of a written notice of election to terminate within sixty (60) days after the date of such damage or destruction:

(a) The Building is damaged by any peril covered by valid and collectible insurance actually carried by Landlord and in force at the time of such damage or destruction (an "insured peril") to such an extent that the estimated cost to restore the Building exceeds the lesser of (i) the insurance proceeds available from insurance actually carried by Landlord plus the deductible with respect to such insurance, or (ii) fifty percent (50%) of the then actual replacement cost thereof;

(b) The Building is damaged by an uninsured peril, which peril Landlord was not required to insure against pursuant to the provisions of Article 9 of this Lease.

(c) The Building is damaged by any peril and, because of the laws then in force, the Building (i) cannot be restored at reasonable cost or (ii) if restored, cannot be used for the same use being made thereof before such damage.

10.4 Tenant's Right To Terminate. If the Leased Premises, the Building or the Outside Area are damaged by any peril and Landlord does not elect to terminate this Lease or is not entitled to terminate this Lease pursuant to this Article, then as soon as reasonably practicable, Landlord shall furnish Tenant with the written opinion of Landlord's architect or construction consultant as to when the restoration work required of Landlord may be complete. Tenant shall have the option to terminate this Lease in the event any of the following occurs, which option may be exercised only by delivery to Landlord of a written notice of election to terminate within seven (7) business days after Tenant receives from Landlord the estimate of the time needed to complete such restoration:

(a) If the time estimated to substantially complete the restoration exceeds nine (9) months from and after the commencement of construction; or

(b) If the damage occurred within twelve (12) months of the last day of the Lease Term and the time estimated to substantially complete the restoration exceeds one hundred eighty (180) days from and after the date such restoration is commenced.

10.5 Tenant's Waiver. Landlord and Tenant agree that the provisions of Paragraph 10.4 above, captioned "Tenant's Right To Terminate", are intended to supersede and replace the provisions contained in California Civil Code, Section 1932, Subdivision 2, and California Civil Code, Section 1934, and accordingly, Tenant hereby waives the provisions of such Civil Code Sections and the provisions of any successor Civil Code Sections or similar laws hereinafter enacted.

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## ARTICLE 11

### CONDEMNATION

11.1 Tenant's Right To Terminate. Except as otherwise provided in Paragraph 11.4 below regarding temporary takings, Tenant shall have the option to terminate this Lease if, as a result of any taking, (i) all of the Leased Premises is taken, or (ii) twenty-five percent (25%) or more of the Leased Premises is taken and the part of the Leased Premises that remains cannot, within a reasonable period of time, be made reasonably suitable for the continued operation of Tenant's business. Tenant must exercise such option within a reasonable period of time, to be effective on the later to occur of (i) the date that possession of that portion of the Leased Premises that is condemned is taken by the condemnor or (ii) the date Tenant vacated the Leased Premises.

11.2 Landlord's Right To Terminate. Except as otherwise provided in Paragraph 11.4 below regarding temporary takings, Landlord shall have the option to terminate this Lease if, as a result of any taking, (i) all of the Leased Premises is taken, (ii) twenty-five percent (25%) or more of the Leased Premises is taken and the part of the Leased Premises that remains cannot, within a reasonable period of time, be made reasonably suitable for the continued operation of Tenant's business, or (iii) because of the laws then in force, the Leased Premises may not be used for the same use being made before such taking, whether or not restored as required by Paragraph 11.3 below. Any such option to terminate by Landlord must be exercised within a reasonable period of time, to be effective as of the date possession is taken by the condemnor.

11.3 Restoration. If any part of the Leased Premises or the Building is taken and this Lease is not terminated, then Landlord shall, to the extent not prohibited by laws then in force, repair any damage occasioned thereby to the remainder thereof to a condition reasonably suitable for Tenant's continued operations and otherwise, to the extent practicable, in the manner and to the extent provided in Paragraph 10.1.

11.4 Temporary Taking. If a portion of the Leased Premises is temporarily taken for a period of ninety (90) days or less and such period does not extend beyond the Lease Expiration Date, this Lease shall remain in effect. If any



portion of the Leased Premises is temporarily taken for a period which exceeds ninety (90) days or which extends beyond the Lease Expiration Date, then the rights of Landlord and Tenant shall be determined in accordance with Paragraphs 11.1 and 11.2 above.

11.5 Division Of Condemnation Award. Any award made for any taking of the Property, the Building, or the Leased Premises, or any portion thereof, shall belong to and be paid to Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any such award; provided, however, that Tenant shall be entitled to receive any portion of the award that is made specifically (i) for the taking of personal property, inventory or trade fixtures belonging to Tenant, (ii) for the interruption of Tenant's business or its moving costs, or (iii) for the value of any leasehold improvements installed and paid for by Tenant. The rights of Landlord and Tenant regarding any condemnation shall be determined as provided in this Article, and each party hereby waives the provisions of Section 1265.130 of the California Code of Civil Procedure, and the provisions of any similar law hereinafter enacted, allowing either party to petition the

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Supreme Court to terminate this Lease and/or otherwise allocate condemnation awards between Landlord and Tenant in the event of a taking of the Leased Premises.

11.6 Abatement Of Rent. In the event of a taking of the Leased Premises which does not result in a termination of this Lease, then, as of the date possession is taken by the condemning authority, the Base Monthly Rent shall be reduced in the same proportion that the area of that part of the Leased Premises so taken (less any addition to the area of the Leased Premises by reason of any reconstruction) bears to the area of the Leased Premises immediately prior to such taking. In the case of a temporary taking, such abatement shall only continue during the pendency of the temporary taking.

11.7 Taking Defined. The term "taking" or "taken" as used in this Article 11 shall mean any transfer or conveyance of all or any portion of the Property to a public or quasi-public agency or other entity having the power of eminent domain pursuant to or as a result of the exercise of such power by such an agency, including any inverse condemnation and/or any sale or transfer by Landlord of all or any portion of the Property to such an agency under threat of condemnation or the exercise of such power.

## ARTICLE 12

### DEFAULT AND REMEDIES

12.1 Events Of Tenant's Default. Tenant shall be in default of its obligations under this Lease if any of the following events occur:

(a) After applicable notice, Tenant shall have failed to pay Base Monthly Rent or any Additional Rent when due; or

(b) Tenant shall have done or permitted to be done any act, use or thing in its use, occupancy or possession of the Leased Premises or the Building or the Outside Areas which is prohibited by the terms of this Lease; or Tenant shall have failed to perform any term, covenant or condition of this Lease (except those requiring the payment of Base Monthly Rent or Additional Rent, which failures shall be governed by subparagraph (a) above) and such prohibited act or failure shall not be cured within thirty (30) days after written notice from Landlord to Tenant specifying the nature of such prohibited action or failure and requesting Tenant to cure the same; provided, however, that if such prohibited action or failure cannot reasonably be cured within thirty (30) days, Tenant shall have such longer period as is reasonably necessary to cure such failure provided that Tenant commences its cure within such thirty (30) day period and prosecutes such cure to completion; or

(c) Tenant shall have sublet the Leased Premises or assigned or encumbered its interest in this Lease in violation of the provisions contained in Article 7, whether voluntarily or by operation of law; or

(d) There shall have been an Abandonment (as defined in Section 4.1) of the Leased Premises by the Tenant; or

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(e) Tenant or any Guarantor of this Lease shall have permitted or suffered the sequestration or attachment of, or execution on, or the appointment of a custodian or receiver with respect to, all or any substantial part of the property or assets of Tenant (or such Guarantor) or any property or asset essential to the conduct of Tenant's (or such Guarantor's) business, and Tenant (or such Guarantor) shall have failed to obtain a return or release of the same within sixty (60) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier; or

(f) Tenant or any Guarantor of this Lease shall have made a general assignment of all or a substantial part of its assets for the benefit of its creditors; or

(g) Tenant or any Guarantor of this Lease shall have allowed (or sought) to have entered against it a decree or order which: (i) grants or constitutes an order for relief, appointment of a trustee, or condemnation or a reorganization plan under the bankruptcy laws of the United States; (ii) approves as properly filed a petition seeking liquidation or reorganization under said bankruptcy laws or any other debtor's relief law or similar statute of the United States or any state thereof; or (iii) otherwise directs the winding up or liquidation of Tenant; provided, however, if any decree or order was entered without Tenant's consent or over Tenant's objection, Landlord may not terminate this Lease pursuant to this subparagraph if such decree or order is rescinded or reversed within sixty (60) days after its original entry; or

(h) Tenant or any Guarantor of this Lease shall have availed itself of the protection of any debtor's relief law, moratorium law or other similar law which does not require the prior entry of a decree or order and same is not rescinded or reversed within sixty (60) days after its original entry.

12.2 Landlord's Remedies. In the event of any default by Tenant, and without limiting Landlord's right to indemnification as provided in Article 8.2, Landlord shall have the following remedies, in addition to all other rights and remedies provided by Law or otherwise provided in this Lease, to which Landlord may resort cumulatively, or in the alternative:

(a) Landlord may, at Landlord's election, keep this Lease in effect and enforce, by an action at law or in equity, all of its rights and remedies under this Lease including, without limitation, (i) the right to recover the rent and other sums as they become due by appropriate legal action, (ii) the right to make payments required by Tenant, or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest at the then maximum rate of interest not prohibited by Law from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant, and (iii) the remedies of injunctive relief and specific performance to prevent Tenant from violating the terms of this Lease and/or to compel Tenant to perform its obligations under this Lease, as the case may be.

(b) Landlord may, at Landlord's election, terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice, in which event Tenant shall immediately surrender the Leased Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying

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the Leased Premises or any part thereof, without being liable for prosecution or any claim or damages therefore. Any termination under this subparagraph shall not relieve Tenant from its obligation to pay to Landlord all Base Monthly Rent and Additional Rent then or thereafter due, or any other sums due or thereafter accruing to Landlord, or from any claim against Tenant for damages previously accrued or then or thereafter accruing. In no event shall any one or more of the following actions by Landlord, in the absence of a written election by Landlord to terminate this Lease constitute a termination of this Lease:

(i) Appointment of a receiver or keeper in order to protect Landlord's interest hereunder;

(ii) Consent to any subletting of the Leased Premises or assignment of this Lease by Tenant, whether pursuant to the provisions hereof or otherwise; or

(iii) Any action taken by Landlord or its partners, principals, members, officers, agents, employees, or servants, which is intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, any action taken to maintain and preserve the Leased Premises on any action taken to relet the Leased Premises or any portion thereof for the account at Tenant and in the name of Tenant.

(c) In the event Tenant breaches this Lease and abandons the Leased Premises, Landlord may terminate this Lease, but this Lease shall not terminate unless Landlord gives Tenant written notice of termination. If Landlord does not terminate this Lease by giving written notice of termination, Landlord may enforce all its rights and remedies under this Lease, including the right and remedies provided by California Civil Code Section 1951.4 ("lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations"), as in effect on the Effective Date of this Lease.

(d) In the event Landlord terminates this Lease, Landlord shall be entitled, at Landlord's election, to the rights and remedies provided in California Civil Code Section 1951.2, as in effect on the Effective Date of this Lease. For purposes of computing damages pursuant to Section 1951.2, an interest rate equal to the maximum rate of interest then not prohibited by Law shall be used where permitted. Such damages shall include, without limitation:

(i) The worth at the time of the award of the unpaid rent which had been earned at the time of termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco, at the time of award plus one percent; plus

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(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including without limitation, the following: (i) expenses for cleaning, repairing or restoring the Leased Premises, (ii) expenses for altering, remodeling or otherwise improving the Leased Premises for the purpose of reletting, including removal of existing leasehold improvements and/or installation of additional leasehold improvements (regardless of how the same is funded, including reduction of rent, a direct payment or allowance to a new tenant, or otherwise), (iii) broker's fees allocable to the remainder of the Lease Term, advertising costs and other expenses of reletting the Leased Premises, (iv) expenses incurred in removing, disposing of and/or storing any of Tenant's personal property, inventory or trade fixtures remaining therein; (v) reasonable attorney's fees, expert witness fees, court costs and other reasonable expenses incurred by Landlord (but not limited to taxable costs) in retaking possession of the Leased Premises, establishing damages hereunder, and releasing the Leased Premises; and (vi) any other expenses, costs or damages otherwise incurred or suffered as a result of Tenant's default.

(e) Any notice of Tenant's breach or default given hereunder shall be effective and shall subject Tenant to judgment for possession and judgment for the actual amount of rent and other sums found to be due in an unlawful detainer or other civil action, notwithstanding the fact that the amount of rent demanded in such notice is not in fact correct, provided that (1) it is determined that some amount of rent was owing, (2) the amount stated in the notice was identified in such notice as an estimated amount, and (3) the amount claimed in the notice was reasonably estimated. The amount claimed in such notice shall be conclusively presumed to have been reasonably estimated if, in relation to the amount determined to be due upon the trial or other judicial determination of that issue, the estimated amount was no more than twenty percent (20%) more or less than the amount determined to be due.

12.3 Landlord's Default And Tenant's Remedies. In the event Landlord fails to perform its obligations under this Lease, Landlord shall nevertheless not be in default under the terms of this Lease until such time as Tenant shall have first given written notice specifying the nature of such failure to perform its obligations, and then only after Landlord shall have had thirty (30) days following its receipt of such notice within which to perform such obligations; provided that, if longer than thirty (30) days is reasonably required in order to perform such obligations, Landlord shall have such longer period. In the event of Landlord's default as above set forth, then, and only then, Tenant may then proceed in equity or at law to compel Landlord to perform its obligations and/or to recover damages proximately caused by such failure to perform (except as and to the extent Tenant has waived its right to damages as provided in this Lease).

12.4 Limitation Of Tenant's Recourse. Tenant's sole recourse against Landlord shall be limited solely and exclusively to an amount which is equal to the lesser of (a) the interest of Landlord in the Building and the Outside Areas, or (b) the equity interest Landlord would have in the Building and the Outside Areas if the Building and the Outside Areas were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Building and the Outside Areas (as such value is reasonably determined by Landlord). If Landlord is a corporation, trust, partnership, joint venture, limited liability company, unincorporated association, or other form of business entity, Tenant agrees that (i) the obligations of Landlord under this Lease shall not constitute personal obligations of the officers, directors, trustees,

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partners, joint venturers, members, owners, stockholders, or other principals of such business entity, and (ii) Tenant shall have recourse only to the interest of such corporation, trust, partnership, joint venture, limited liability company, unincorporated association, or other form of business entity in the Building and the Outside Areas for the satisfaction of such obligations and not against the assets of such officers, directors, trustees, partners, joint venturers, members, owners, stockholders or principals. Additionally, if Landlord is a partnership or limited liability company, then Tenant covenants and agrees:

(a) No partner or member of Landlord shall be sued or named as a party in any suit or action brought by Tenant with respect to any alleged breach of this Lease (except to the extent necessary to secure jurisdiction over the partnership and then only for that sole purpose);

(b) No service of process with respect to any alleged breach of this Lease shall be made against any partner or member of Landlord except for the sole purpose of securing jurisdiction over the partnership; and

(c) No writ of execution will ever be levied against the assets of any partner or member of Landlord other than to the extent of his or her interest in the assets of the partnership or limited liability company constituting Landlord.

Tenant further agrees that each of the foregoing covenants and agreements shall be enforceable by Landlord and by any partner or member of Landlord and shall be applicable to any actual or alleged misrepresentation or nondisclosure made regarding this Lease or the Leased Premises or any actual or alleged failure, default or breach of any covenant or agreement either expressly or implicitly contained in this Lease or imposed by statute or at common law.

12.5 Tenant's Waiver. Landlord and Tenant agree that the provisions of Paragraph 12.3 above are intended to supersede and replace the provisions of California Civil Code Sections 1932(1), 1941 and 1942, and accordingly, Tenant hereby waives the provisions of California Civil Code Sections 1932(1), 1941 and 1942 and/or any similar or successor law regarding Tenant's right to terminate this Lease or to make repairs and deduct the expenses of such repairs from the rent due under this Lease.

#### ARTICLE 13

##### GENERAL PROVISIONS

13.1 Taxes On Tenant's Property. Tenant shall pay before delinquency any and all taxes, assessments, license fees, use fees, permit fees and public charges of whatever nature or description levied, assessed or imposed against Tenant or Landlord by a governmental agency arising out of, caused by reason of or based upon Tenant's estate in this Lease, Tenant's ownership of property, improvements made by Tenant to the Leased Premises or the Outside Areas, improvements made by Landlord for Tenant's use within the Leased Premises or the Outside Areas, Tenant's use (or estimated use) of public facilities or services or Tenant's consumption (or estimated consumption) of public utilities, energy, water or other resources (collectively, "Tenant's Interest"). Upon demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. If any such taxes, assessments, fees or public

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charges are levied against Landlord, Landlord's property, the Building, the Property, or the Project, or if the assessed value of the Building, the Property, or the Project is increased by the inclusion therein of a value placed upon Tenant's Interest, regardless of the validity thereof, Landlord shall have the right to require Tenant to pay such taxes, and if not paid and satisfactory evidence of payment delivered to Landlord at least ten (10) days prior to delinquency, then Landlord shall have the right to pay such taxes on Tenant's behalf and to invoice Tenant for the same. Tenant shall pay to Landlord, as Additional Rent, the amount set forth in Landlord's invoice within the earlier to occur of (a) thirty (30) days of the date it receives an invoice from Landlord setting forth the amount of such taxes, assessments, fees, or public charge so levied, or (b) after applicable notice, the due date of such invoice. Failure by Tenant to pay the amount so invoiced within such time period shall be conclusively deemed a default by Tenant under this Lease. Tenant shall have the right to bring suit in any court of competent jurisdiction to recover from the taxing authority the amount of any such taxes, assessments, fees or public charges so paid.

13.2 Holding Over. This Lease shall terminate without further notice on the Lease Expiration Date (as set forth in Article 1). Any holding over by Tenant after expiration of the Lease Term shall neither constitute a renewal nor extension of this Lease nor give Tenant any rights in or to the Leased Premises except as expressly provided in this paragraph. Any such holding over to which Landlord has consented shall be construed to be a tenancy from month to month, on the same terms and conditions herein specified insofar as applicable, except that the Base Monthly Rent shall be increased to an amount equal to one hundred

fifty percent (150%) of the Base Monthly Rent payable during the last full month immediately preceding such holding over. Tenant acknowledges that if Tenant holds over without Landlord's consent, such holding over may compromise or otherwise affect Landlord's ability to enter into new leases with prospective tenants regarding the Leased Premises. Therefore, if Tenant fails to surrender the Leased Premises upon the expiration or termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against all claims resulting from such failure, including, without limiting the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any losses suffered by Landlord, including lost profits, resulting from such failure to surrender.

13.3 Subordination To Mortgages. This Lease is subject to and subordinate to all ground leases, so-called "synthetic leases," mortgages and deeds of trust which affect the Building, the Property, or the Project and which are of public record (or memoranda of same are of public record) as of the Effective Date of this Lease, and to all renewals, modifications, consolidations, replacements and extensions thereof. However, if the lessor under any such ground lease or synthetic lease, or any lender holding any such mortgage or deed of trust, shall advise Landlord that it desires or requires this Lease to be made prior and superior thereto, then, upon written request of Landlord to Tenant, Tenant shall promptly execute, acknowledge and deliver any and all customary or reasonable documents or instruments which Landlord and such lessor or lender deems necessary or desirable to make this Lease prior thereto. Tenant hereby consents to Landlord's ground leasing the land underlying the Building, the Property, or the Project, and/or leasing or subleasing the Building, the Property, or the Project, and/or encumbering the Building, the Property, or the Project as security for future loans on such terms as Landlord shall desire, all of which future leases, ground leases, mortgages or deeds of trust shall be subject to and

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subordinate to this Lease. However, if any lessor under any such future ground lease or any lender holding such future mortgage or deed of trust shall desire or require that this Lease be made subject to and subordinate to such future ground lease, mortgage or deed of trust, then Tenant agrees, within ten (10) business days after Landlord's written request therefore, to execute, acknowledge and deliver to Landlord any and all documents or instruments requested by Landlord or by such lessor or lender as may be necessary or proper to assure the subordination of this Lease to such future ground lease, mortgage or deed of trust, but only if such lessor or lender, either in a new writing or in the document to which this Lease is being subordinated, agrees not to disturb Tenant's quiet possession of the Leased Premises so long as Tenant is not in default beyond applicable grace, notice and cure periods under this Lease. If Landlord assigns the Lease as security for a loan, or executes a so-called "synthetic lease," Tenant agrees to execute such documents as are reasonably requested by the lender or lessor and to provide reasonable provisions in the Lease (which do not impair Tenant's rights hereunder) protecting such lender's or lessor's interest which are customarily required by institutional lenders making loans secured by a deed of trust, or by institutional synthetic lessors.

13.4 Tenant's Attornment Upon Foreclosure. Tenant shall, upon request, attorn (i) to any purchaser of the Building or the Property at any foreclosure sale or private sale conducted pursuant to any security instruments encumbering the Building or the Property, (ii) to any grantee or transferee designated in any deed given in lieu of foreclosure of any security interest encumbering the Building or the Property, or (iii) to the lessor under an underlying ground lease of the land underlying the Building or the Property, or any synthetic lease of the Building or the Property, should such lease or ground lease be terminated; provided that such purchaser, grantee or lessor recognizes Tenant's rights under this Lease.

13.5 Mortgagee Protection. In the event of any default on the part of Landlord, Tenant will give notice by registered mail to Owner and any Lender or lessor under any underlying ground lease or synthetic lease who shall have requested, in writing, to Tenant that it be provided with such notice, and Tenant shall offer such Lender or lessor a reasonable opportunity to cure the default, including time to obtain possession of the Leased Premises by power of sale or judicial foreclosure or other appropriate legal proceedings if reasonably necessary to effect a cure.

13.6 Estoppel Certificate. Tenant will, following any request by Landlord, promptly execute and deliver to Landlord an estoppel certificate substantially in form attached as Exhibit G, (i) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, (ii) stating the date to which the rent and other charges are paid in advance, if any, (iii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iv) certifying such other information about this Lease as may be reasonably requested by Landlord, its Lender or prospective lenders, investors or purchasers of the Building or the Property.

Tenant's failure to execute and deliver such estoppel certificate within ten (10) business days after Landlord's request therefore shall be a material default by Tenant under this Lease, and Landlord shall have all of the rights and remedies available to Landlord as Landlord would otherwise have in the case of any other material default by Tenant, including the right to terminate this Lease and sue for damages proximately caused thereby, it being agreed and understood by Tenant that Tenant's failure to so deliver such estoppel certificate in a timely manner could result in Landlord being

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unable to perform committed obligations to other third parties which were made by Landlord in reliance upon this covenant of Tenant. Landlord and Tenant intend that any statement delivered pursuant to this paragraph may be relied upon by any Lender or purchaser or prospective Lender or purchaser of the Building, the Property, or any interest in them.

13.7 Tenant's Financial Information. Tenant shall deliver to Landlord within five (5) business days after Landlord's request, copies of all statements, reports and notices sent or made available generally by Tenant to its security holders or to any holders of subordinated debt and all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission. Landlord shall be entitled to disclose such financial statements or other information to its Lender, to any present or prospective principal of or investor in Landlord, or to any prospective Lender or purchaser of the Building, the Property, or any portion thereof or interest therein. Any such financial statement or other information which is marked "confidential" or "company secrets" (or is otherwise similarly marked by Tenant) shall be confidential and shall not be disclosed by Landlord to any third party except as specifically provided in this paragraph, unless the same becomes a part of the public domain without the fault of Landlord.

13.8 Transfer By Landlord. Landlord and its successors in interest shall have the right to transfer any portions (including all) of their interest in the Building, the Property, or any portion thereof at any time and to any person or entity. In the event of any such transfer, the Landlord originally named herein (and in the case of any subsequent transfer, the transferor), from the date of such transfer, (i) shall be automatically relieved, without any further act by any person or entity, of all liability for the performance of the obligations of the Landlord hereunder which may accrue after the date of such transfer and (ii) shall be relieved of all liability for the performance of the obligations of the Landlord hereunder which have accrued before the date of transfer if its transferee agrees to assume and perform all such prior obligations of the Landlord hereunder. Tenant shall attend to any such transferee. After the date of any such transfer, the term "Landlord" as used herein shall mean the transferee of such interest in the Building or the Property.

13.9 Force Majeure. The time for performance of the obligations of each of the parties under this Lease (other than the obligations to pay money) shall be temporarily extended, if such party is prevented or delayed in performing such obligations by reason of any strikes, lockouts or labor disputes; government restrictions, regulations, controls, action or inaction; civil commotion; or extraordinary weather, fire or other acts of God.

13.10 Notices. Any notice required or permitted to be given under this Lease shall be in writing and (i) personally delivered, (ii) sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, (iii) sent by Federal Express or similar nationally recognized overnight courier service, or (iv) transmitted by facsimile with a hard copy sent within one (1) business day by any of the foregoing means, and in all cases addressed as follows, and such notice shall be deemed to have been given upon the date of actual receipt or delivery (or refusal to accept delivery) at the address specified below (or such other addresses as may be specified by notice in the foregoing manner) as indicated on the return receipt or air bill:

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If to Landlord: Electronics For Imaging, Inc.  
303 Velocity Way  
Foster City, California 94404  
Attention: Peter Schaffer  
Facsimile: (650) 357-3598

with a copy to: Cooley Godward LLP  
One Maritime Plaza  
20th Floor  
San Francisco, California 94111  
Attention: Paul Churchill  
Facsimile: (415) 951-3699

If to Tenant:  
prior to occupancy: Equinix, Inc  
2450 Bayshore Parkway  
Mountain View, CA 94043

Attention: Kristine Mostofizadeh  
Facsimile: (650) 316-6909

After occupancy:

Equinix, Inc.  
301 Velocity Way  
Foster City, CA 94404  
Attention: Kristine Mostofizadeh  
Facsimile: (650) 316-6909

In each case  
with a copy to:

Orrick, Herrington & Sutcliffe LLP  
400 Sansome Street  
San Francisco, CA 94111  
Attention: Sunil Bajaj, Esq.  
Facsimile: (415) 773-5759

Any notice given in accordance with the foregoing shall be deemed received upon actual receipt or refusal to accept delivery.

13.11 Attorneys' Fees. In the event any party shall bring any action, arbitration proceeding or legal proceeding alleging a breach of any provision of this Lease, to recover rent, to terminate this Lease, or to enforce, protect, determine or establish any term or covenant of this Lease or rights or duties hereunder of either party, the prevailing party shall be entitled to recover from the non-prevailing party as a part of such action or proceeding, or in a separate action for that purpose brought within one year from the determination of such proceeding, reasonable attorneys' fees, expert witness fees, court costs and other reasonable expenses incurred by the prevailing party.

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13.12 Definitions. Any term that is given a special meaning by any provision in this Lease shall, unless otherwise specifically stated, have such meaning wherever used in this Lease or in any Addenda or amendment hereto. In addition to the terms defined in Article 1, the following terms shall have the following meanings:

(a) Real Property Taxes. The term "Real Property Tax" or "Real Property Taxes" shall each mean the sum of:

(i) (A) Tenant's Expense Share of the Building, multiplied by (B) (1) all taxes, assessments, levies and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all instruments of principal and interest required to pay any general or special assessments for public improvements and any increases resulting from reassessments caused by any change in ownership or new construction), now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments (collectively, the "Tax Component"), which are levied or assessed for whatever reason against the Property or any portion thereof, or Landlord's interest therein, or the fixtures, equipment and other property of Landlord that is an integral part of the Property and located thereon, or Landlord's business of owning, leasing or managing the Property or the gross receipts, income or rentals from the Property, plus (2) all charges, levies or fees imposed by any governmental authority against Landlord by reason of or based upon the use of or number of parking spaces within the Property, the amount of public services or public utilities used or consumed (e.g. water, gas, electricity, sewage or waste water disposal) at the Property, the number of person employed by tenants of the Property, the size (whether measured in area, volume, number of tenants or whatever) or the value of the Property, or the type of use or uses conducted within the Property, and all costs and fees (including attorneys' fees) reasonably incurred by Landlord in contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax, plus

(ii) (A) Tenant's Expense Share of the Project, multiplied by (B) (1) the Tax Component as levied or assessed for whatever reason against the Common Areas of the Project (as hereinafter defined) or any portion thereof, or Landlord's interest therein, or the fixtures, equipment and other property of Landlord that is an integral part of the Common Areas of the Project and located thereon, or Landlord's business of owning, leasing or managing the Common Areas of the Project or the gross receipts, income or rentals from the Common Areas of the Project, plus (2) all charges, levies or fees imposed by any governmental authority against Landlord by reason of or based upon the use of or number of parking spaces within the Common Areas of the Project, the amount of public services or public utilities used or consumed (e.g. water, gas, electricity, sewage or waste water disposal) by the Common Areas of the Project, the size (whether measured in area, volume, number of tenants or whatever) or the value of the Common Areas of the Project, or the type of use or uses conducted within the Common Areas of the Project, and all costs and fees (including attorneys' fees) reasonably incurred by Landlord in contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax relating to the Common Areas of the Project. [As used herein, the term "Common Areas of the Project" means those exterior portions of the improved portions of the Project (e.g. landscaping, parking spaces, roadways, walkways) which at the time of

calculation, are available for the enjoyment of Tenant and other Project tenants or which service the project. The Common Areas of the Project shall not include, any vacant unimproved land, and any other

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portions of the Project that contain land, buildings and other improvements that are not available for the enjoyment of Tenant or which do not service the project and other Project tenants.

If, at any time during the Lease Term, the taxation or assessment of the Property or the Common Areas of the Project prevailing as of the Effective Date of this Lease shall be altered so that in lieu of or in addition to any the Real Property Tax described above there shall be levied, awarded or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate, substitute, or additional use or charge (i) on the value, size, use or occupancy of the Property, or the Common Areas of the Project, or Landlord's interest therein or (ii) on or measured by the gross receipts, income or rentals from the Property or the Common Areas of the Project, or on Landlord's business of owning, leasing or managing the Property or the Common Areas of the Project, or (iii) computed in any manner with respect to the operation of the Property or the Common Areas of the Project, then any such tax or charge, however designated, shall be included within the meaning of the terms "Real Property Tax" or "Real Property Taxes" for purposes of this Lease. Notwithstanding the foregoing, the terms "Real Property Tax" or "Real Property Taxes" shall not include estate, inheritance, transfer, gift or franchise taxes of Landlord or the federal or state income tax imposed on Landlord's income from all sources.

(b) Landlord's Insurance Costs. The term "Landlord's Insurance Costs" shall mean the sum of:

(i) (A) Tenant's Expense Share of the Property, multiplied by (B) the costs to Landlord to carry and maintain the policies of fire and property damage insurance for the Building and the Property and general liability and any other insurance required or permitted to be carried by Landlord pursuant to Article 9 and any deductible amounts paid by Landlord upon the occurrence of any insured casualty or loss, plus

(ii) (A) Tenant's Expense Share of the Project, multiplied by (B) the costs to Landlord to carry and maintain for the Common Areas of the Project the policies of fire and property damage insurance and general liability and any other insurance required or permitted to be carried by Landlord pursuant to Article 9 and any deductible amounts paid by Landlord upon the occurrence of any insured casualty or loss to the Common Areas of the Project.

(c) Property Maintenance Costs. The term "Property Maintenance Costs" shall mean the sum of:

(i) (A) Tenant's Expense Share of the Building, multiplied by (B) all costs and expenses (except Landlord's Insurance Costs and Real Property Taxes) paid or incurred by Landlord in owning (which for purposes of this Lease excludes leasing the Property from Owner pursuant to the Master Lease, and any rent payments thereunder), but including protecting, operating, maintaining, repairing and preserving the Property and all parts thereof, including without limitation, (1) property management fees which shall be consistent with comparable properties within San Mateo County, (2) the amortizing portion of the cost of any capital improvements made by Landlord to the Property or capital assets acquired by Landlord after the Base Year required under any (x) governmental requirement with which the Property was not required to comply during the Base Year, or (y) for the protection of the health and safety of the occupants

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of the Property or that are designed to reduce other Property Maintenance Costs, such cost thereof to be amortized at the rate of ten percent (10%) per annum on funds borrowed for the purpose of constructing or acquiring such capital improvements or capital assets, but in either case not more than the maximum rate permitted by law at the time such capital improvements or capital assets are constructed or acquired; the amortizing portion of any costs incurred by Landlord in the making of any modifications, alterations or improvements required by any governmental authority as set forth in Article 6, which are so amortized during the Lease Term, (3) association dues, fees, and charges of any kind payable pursuant to any Private Restrictions, and (4) repairs to and maintenance of the Property, including building systems and appurtenances thereto and normal repair and replacement of worn-out equipment, facilities and installations, but excluding the replacement of major building systems (except to the extent provided in (2) above) such other costs as may be paid or incurred with respect to operating, maintaining, and preserving the Property, such as repairing exterior surfaces of the Building (including roofs), repairing and resurfacing paved areas, and repairing and replacing, when necessary, electrical, plumbing, heating, ventilating and air conditioning systems serving



the Building, plus

(ii) (A) Tenant's Expense Share of the Project, multiplied by (B) all costs and expenses (except Landlord's Insurance Costs and Real Property Taxes) paid or incurred by Landlord in owning (which for purposes of this Lease excludes leasing the Project from Owner pursuant to the Master Lease, and any rent payments thereunder), but including protecting, operating, maintaining, repairing and preserving the Common Areas of the Project and all parts thereof, including without limitation, (1) property management fees which shall be consistent with comparable properties within San Mateo County, (2) the amortizing portion of the cost of any capital improvements made by Landlord to the Common Areas of the Project or capital assets acquired by Landlord with respect to the Common Areas of the Project after the Base Year required under (x) any governmental requirement with which the Project was not required to comply during the Base Year, or (y) for the protection of the health and safety of the occupants of the Common Areas of the Project or that are designed to reduce other Property Maintenance Costs, such cost thereof to be amortized at the rate of ten percent (10%) per annum on funds borrowed for the purpose of constructing or acquiring such capital improvements or capital assets, but in either case not more than the maximum rate permitted by law at the time such capital improvements or capital assets are constructed or acquired any costs incurred by Landlord in the making of any modifications, alterations or improvements required by any governmental authority as set forth in Article 6, which are so amortized during the Lease Term, (3) association dues, fees, and charges of any kind payable pursuant to any Private Restrictions, and (4) such other costs as may be paid or incurred with respect to operating, maintaining, and preserving the Common Areas of the Project.

In no event shall Property Maintenance Costs include the following: (i) depreciation on any portion of the Building, the Property or the Project or equipment or systems therein; (ii) debt service; (iii) rental under any ground or underlying lease; (iv) interest (except as expressly provided above with respect to the amortization of capital improvements); (v) attorneys' fees and expenses incurred in connection with lease negotiations or disputes with existing or prospective tenants of the Building, the Property or the Project; (vi) the cost of any repairs, improvements, alterations or equipment which would be properly classified as capital expenditures according to generally accepted accounting principles and practices (except for any capital expenditures

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included in Property Maintenance Costs above); (vii) the cost of decorating, improving for tenant occupancy, painting or redecorating portions of the Building, the Property or the Project to be demised to tenants; (viii) executive salaries or Landlord's general overhead and personnel costs above the level of Building manager; (ix) advertising; (x) real estate brokers' or other leasing commissions; (xi) replacement of or repairs to the structural portions of the roof or to the exterior walls or any other structural repairs to any portion of the Building, the Property or the Project; (xii) repairs to the extent covered by insurance proceeds or paid by Tenant or other third parties; (xiii) costs of abatement or remediation of Hazardous Substances, including asbestos, brought upon, constructed in, stored, used or disposed of in or about the Building, the Property or the Project by Landlord, or a predecessor owner of the Building, the Property or the Project, or a particular tenant or occupant of the Building, the Property or the Project or any other third party, other than Tenant, its agents, employees, contractors, invitees, subtenants or assignees; (xiv) costs of services furnished to one or more tenants of the Building, the Property or the Project which are not furnished to Tenant; (xv) political or charitable contributions; or (xvi) the cost of paintings, sculptures and other works of art.

(d) Property Operating Expenses. The term "Property Operating Expenses" shall mean and include all Real Property Taxes, Landlord's Insurance Costs, and Property Maintenance Costs for a given calendar year to the extent such Real Property Taxes, Landlord's Insurance Costs and Property Maintenance Cost exceed the Real Property Taxes, Landlord's Insurance Costs and Property Maintenance Costs paid by Landlord during the Base Year. Any Real Property Taxes, Landlord's Insurance Costs, or Property Maintenance Costs for the Base Year shall not include market-wide cost increases due to extraordinary circumstances, including, but not limited to, Force Majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, or amortized costs relating to capital improvements. In no event shall the components of Property Operating Expenses for any year subsequent to the Base Year be less than the components of Property Operating Expenses in the Base Year. If in any Lease Year the Property or the Project is less than 95% occupied, the Property Operating Expenses shall be appropriately adjusted to reflect a 95% occupancy level for the Property or the Project.

(e) Law. The term "Law" shall mean any judicial decisions and any statute, constitution, ordinance, resolution, regulation, rule, administrative order, land use approval, entitlement, general or specific plan, use permit, or other requirements of any municipal, county, state, federal, or other governmental agency or authority having jurisdiction over the parties to this Lease, the Leased Premises, the Building, the Property, or the Project, or any

of them, in effect either at the Effective Date of this Lease or at any time during the Lease Term, including, without limitation, any regulation, order, or policy of any quasi-official entity or body (e.g. a board of fire examiners or a public utility or special district).

(f) Lender. The term "Lender" shall mean the holder of any promissory note or other evidence of indebtedness secured by the Property or any portion thereof.

(g) Private Restrictions. The term "Private Restrictions" shall mean (as they may exist from time to time) any and all covenants, conditions and restrictions, private agreements of which tenant is given notice, easements, and any other recorded documents or instruments affecting the use of the Property, the Building, the Leased Premises, the Outside Areas, or the Project of which Tenant is given notice. Tenant, at the written request of Landlord, shall at any

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time or times execute any new Private Restrictions that are either (1) requested by Landlord and do not unreasonably interfere with Tenant's use of the Leased Premises, or (2) required by any applicable governmental or quasi-governmental agency.

(h) Rent. The term "Rent" shall mean collectively Base Monthly Rent and all Additional Rent.

(i) Tenant's Expense Share of the Project. The term "Tenant's Expense Share of the Project" shall mean the percentage obtained from time to time by dividing the rentable square footage of the Leased Premises at the time of calculation by the rentable square footage of all the buildings that are part of the Project. Such percentage is currently 8.02%. In the event that the rentable square footage of the buildings in the Project changes (as a result of structural alterations to existing buildings or the addition of new buildings), Tenant's Expense Share of the Project shall be recalculated using the above formula.

13.13 Landlord's Right to Relocate Tenant. Landlord shall have the right, upon providing Tenant sixty (60) days' notice in writing, to provide Tenant with comparable space of approximately the same size and at the same elevation as the Leased Premises and to move Tenant to said space. Landlord shall arrange for moving Tenant and shall pay the costs of actually moving Tenant, including but not limited to the cost of moving and installing Tenant's furniture, fixtures and equipment, including data and telecommunications equipment and cabling, in such new space, as well as the cost of reprinting Tenant's business cards and stationery. In the event Landlord moves Tenant to such new space, then this Lease and each and all of the terms and covenants and conditions hereof shall remain in full force and effect, the rentable square footage of the Leased Premises, Base Monthly Rent, Tenant's Expense Share of the Building and Tenant's Expense Share of the Common Areas shall be revised accordingly, and the revised floor plan shall become part of this Lease and shall reflect the location of the new space. Notwithstanding anything to the contrary herein, Landlord shall not have the right to exercise its right to relocate during the last twelve (12) months of the initial Term of the Lease.

13.14 General Waivers. One party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the first party's consent to or approval of any subsequent similar act by the other party. No waiver of any provision hereof, or any waiver of any breach of any provision hereof, shall be effective unless in writing and signed by the waiving party. The receipt by Landlord of any rent or payment with or without knowledge of the breach of any other provision hereof shall not be deemed a waiver of any such breach. No waiver of any provision of this Lease shall be deemed a continuing waiver unless such waiver specifically states so in writing and is signed by both Landlord and Tenant. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this Lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other provisions herein contained.

13.15 Governing Law; Waiver of Trial by Jury. THIS LEASE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD

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AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF THE SUPERIOR COURT OF CALIFORNIA LOCATED IN THE COUNTY OF SAN MATEO, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN

RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, THE BUILDING, THE OUTSIDE AREA, THE PROPERTY, OR THE PROJECT AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE MONTHLY RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

13.16 Miscellaneous. Should any provisions of this Lease prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. Any copy of this Lease which is executed by the parties shall be deemed an original for all purposes. This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of Landlord and Tenant. The term "party" shall mean Landlord or Tenant as the context implies. If Tenant consists of more than one person or entity, then all members of Tenant shall be jointly and severally liable hereunder. Submission of this Lease for review, examination or signature by Tenant does not constitute an offer to lease, a reservation of or an option for lease, and notwithstanding any inconsistent language contained in any other document, this Lease is not effective as a lease, sublease, or otherwise until execution and delivery by both Landlord and Tenant, and no party shall have any binding obligations pursuant hereto until such party shall have executed this Lease and delivered an executed copy of this Lease to the other party. This Lease shall be construed and enforced in accordance with the Laws of the State in which the Leased Premises are located. The captions in this Lease are for convenience only and shall not be construed in the construction or interpretation of any provision hereof. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership, corporation, limited liability company, joint venture, or other form of business entity, and the singular includes the plural. The terms "must," "shall," "will," and "agree" are mandatory. The term "may" is permissive. When a party is required to do something by this Lease, it shall do so at its sole cost and expense without right of reimbursement from the other party unless specific provision is made therefore. Where Landlord's consent is required hereunder, the consent of Owner, any Lender, ground lessor, or synthetic lessor shall also be required. Landlord and Tenant shall both be deemed to have drafted this Lease, and the rule of construction that a document is to be construed against the drafting party shall not be employed in the construction or interpretation of this Lease. Where Tenant is obligated not to perform any act or is not permitted to perform any act, Tenant is also obligated to restrain any others reasonably within its control, including agents, invitees,

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contractors, subcontractors and employees, from performing such act. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of any of the provisions of this Lease.

#### ARTICLE 14

##### CORPORATE AUTHORITY BROKERS AND ENTIRE AGREEMENT

14.1 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of such corporation represents and warrants that Tenant is validly formed and duly authorized and existing, that Tenant is qualified to do business in the State in which the Leased Premises are located, that Tenant has the full right and legal authority to enter into this Lease, and that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with its terms. Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of the resolution of its board of directors authorizing or ratifying the execution of this Lease and if Tenant fails to do so, such failure shall be a material breach by Tenant, in which event Landlord may in its sole discretion elect to terminate this Lease.

14.2 Brokerage Commissions. Tenant represents, warrants and agrees that it has not had any dealings with any real estate broker(s), leasing agent(s), finder(s) or salesmen, other than the Brokers (as named in Article 1) with respect to the sublease by it of the Leased Premises pursuant to this Lease, and that it will indemnify, defend with competent counsel, and hold Landlord harmless from any liability for the payment of any real estate brokerage commissions, leasing commissions or finder's fees claimed by any other real estate broker(s), leasing agent(s), finder(s), or salesmen to be earned or due and payable by reason of Tenant's agreement or promise (implied or otherwise) to pay (or to have Landlord pay) such a commission or finder's fee by reason of its leasing the Leased Premises pursuant to this Lease. Landlord shall be responsible for paying any commissions owed to Landlord's Broker pursuant to a separate agreement.

14.3 Entire Agreement. This Lease and the Exhibits (as described in Article 1), which Exhibits are by this reference incorporated herein, constitute the entire agreement between the parties, and there are no other agreements, understandings or representations between the parties relating to the sublease by Landlord of the Leased Premises to Tenant, except as expressed herein. No subsequent changes, modifications or additions to this Lease shall be binding upon the parties unless in writing and signed by both Landlord and Tenant.

14.4 Landlord's Representations. Landlord hereby represents and warrants to Tenant, that Landlord has the right and authority to sublease the "Leased Premises" to Tenant without the consent of the Owner. Tenant acknowledges that neither Landlord nor any of its agents made any representations or warranties respecting the Property, the Building or the Leased Premises, upon which Tenant relied in entering into the Lease, which are not expressly set forth in this Lease. Tenant further acknowledges that neither Landlord nor any of its agents made any representations as to (i) whether the Leased Premises may be used for Tenant's intended use under existing Law, or (ii) the suitability of the Leased Premises for the conduct of Tenant's

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business, or (iii) the exact square footage of the Leased Premises, and that Tenant relies solely upon its own investigations with respect to such matters. Tenant expressly waives any and all claims for damage by reason of any statement, representation, warranty, promise or other agreement of Landlord or Landlord's agent(s), if any, not contained in this Lease or in any Exhibit attached hereto.

#### ARTICLE 15

##### OPTION TO EXTEND

15.1 So long as Equinix or an Affiliate as defined herein is the Tenant hereunder and occupies the entirety of the Leased Premises, and subject to the condition set forth in clause (b) below, Tenant or such Affiliate shall have one (1) option to extend the Lease Term with respect to the entirety of the Leased Premises (the "Option"), for a period of five (5) years from the expiration of the initial Lease Term (the "Extension Period"), subject to the following conditions:

(a) The Option shall be personal to Equinix or an Affiliate as defined herein and shall not be transferable, and shall be exercised, if at all, by written notice of exercise given to Landlord by Tenant or such Affiliate not more than twelve (12) months nor less than six (6) months prior to the expiration of the initial Lease Term;

(b) Anything herein to the contrary notwithstanding, if Landlord determines within a period of forty-five (45) days from the date Landlord receives Tenant's or an Affiliate's notice of exercise ("Landlord's Election Period"), that Landlord will utilize all or any portion of the Leased Premises for Landlord's own use, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in this Lease, the right to terminate the Option as to all of the Leased Premises, at Landlord's sole option, upon forty-five (45) days written notice to Tenant or such Affiliate; and

(c) Anything herein to the contrary notwithstanding, if Tenant is in default under any of the terms, covenants or conditions of this Lease, either at the time Tenant exercises the Option or on the commencement date of the Extension Period, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in this Lease, the right to terminate the Option upon notice to Tenant.

15.2 In the event the Option is exercised in a timely fashion and Landlord does not elect to terminate pursuant to clauses (b) or (c) above, the Lease shall be extended for the term of the Extension Period upon all of the terms and conditions of this Lease, provided that the Base Monthly Rent for the Extension Period shall be the "Fair Market Rent" for the Leased Premises, increased as set forth below. For purposes hereof, "Fair Market Rent" shall mean the Base Monthly Rent reasonably determined pursuant to the process described below. In no event, however, shall any adjustment of Base Monthly Rent pursuant to this paragraph result in a decrease of the Base Monthly Rent for the Leased Premises below the amount due from Tenant for the preceding portion of the initial Lease Term for which Base Monthly Rent had been fixed. At the end of the Lease Year coinciding with the first 12 month period of the Extension Period,

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Base Monthly Rent shall be increased for the ensuing Lease Year to reflect the change in the CPI for the 12-month period ending five (5) months prior to the expiration of the Lease Year then ended, but in no event shall Base Monthly Rent be increased less than 3% per annum compounded annually nor more than 3% per annum compounded annually for such 12 month period. At the end of each

subsequent Lease Year during the Extension Period, Base Monthly Rent shall be so increased for the ensuing Lease Year in accordance with the formula set forth in the preceding sentence.

15.3 No later than thirty (30) days after the expiration of Landlord's Election Period, Landlord shall notify Tenant in writing of Landlord's estimate of the Base Monthly Rent for the Extension Period, based on the provisions of Paragraph 15.2 above. Within thirty (30) days after receipt of such notice from Landlord, Tenant shall have the right either to (i) accept Landlord's statement of Base Monthly Rent as the Base Monthly Rent for the Extension period; or (ii) elect to arbitrate Landlord's estimate of Fair Market Rent, such arbitration to be conducted pursuant to the provisions hereof. Failure on the part of Tenant to require arbitration of Fair Market Rent within such 30-day period shall constitute acceptance of the Base Monthly Rent for the Extension period as calculated by Landlord. If Tenant elects arbitration, the arbitration shall be concluded within ninety (90) days after the date of Tenant's election, subject to extension for an additional 30-day period if a third arbitrator is required and does not act in a timely manner. To the extent that arbitration has not been completed prior to the expiration of any preceding period for which Base Monthly Rent has been determined, Tenant shall pay Base Monthly Rent at the rate calculated by Landlord, with the potential for an adjustment to be made once Fair Market Rent is ultimately determined by arbitration.

15.4 In the event of arbitration, the judgment or the award rendered in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted and determined in the County of San Mateo in accordance with the then prevailing rules of the American Arbitration Association or its successor for arbitration of commercial disputes except to the extent that the procedures mandated by such rules shall be modified as follows:

(a) Tenant shall make demand for arbitration in writing within thirty (30) days after service of Landlord's determination of Fair Market Rent given under Paragraph 15.3 above, specifying therein the name and address of the person to act as the arbitrator on its behalf. The arbitrator shall be qualified as a real estate appraiser familiar with the Fair Market Rent of similar research and development, light assembly or office space in the Foster City, San Mateo and Redwood Shores areas who would qualify as an expert witness over objection to give opinion testimony addressed to the issue in a court of competent jurisdiction. Failure on the part of Tenant to make a proper demand in a timely manner for such arbitration shall constitute a waiver of the right thereto. Within fifteen (15) days after the service of the demand for arbitration, Landlord shall give notice to Tenant, specifying the name and address of the person designated by Landlord to act as arbitrator on its behalf who shall be similarly qualified. If Landlord fails to notify Tenant of the appointment of its arbitrator, within or by the time above specified, then the arbitrator appointed by Tenant shall be the arbitrator to determine the issue.

(b) In the event that two arbitrators are chosen pursuant to Paragraph 15.4(a) above, the arbitrators so chosen shall, within fifteen (15) days after the second arbitrator is appointed

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determine the Fair Market Rent, which for such purposes shall be the projected fair market rental rate at the commencement of the Extension Period for space comparable to the Leased Premises, comparable Class A mid-rise office buildings in the Foster City, San Mateo and Redwood Shores areas (without any deductions or adjustments for costs and expenses, including but not limited to brokerage commissions, tenant improvement allowances, etc., saved by Landlord by reason of extending the Lease Term rather than re-leasing the Leased Premises to a new tenant), but in no event lower than the Base Monthly Rent for the preceding portion of the initial Lease Term for which Base Monthly Rent had been fixed. If the two arbitrators shall be unable to agree upon a determination of Fair Market Rent within such 15-day period, they, themselves, shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to Paragraph 15.4(a). In the event they are unable to agree upon such appointment within seven (7) days after expiration of such 15-day period, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request appointment of such a qualified person by the then Presiding Judge of the California Superior Court for the County of San Mateo, acting in his private and not in his official capacity, and the other party shall not raise any question as to such Judge's full power and jurisdiction to entertain the application for and make the appointment. The three arbitrators shall decide the dispute if it has not previously been resolved by following the procedure set forth below.

(c) Where an issue cannot be resolved by agreement between the two arbitrators selected by Landlord and Tenant or settlement between the parties during the course of arbitration, the issue shall be resolved by the three arbitrators within fifteen (15) days of the appointment of the third

arbitrator in accordance with the following procedure. The arbitrator selected by each of the parties shall state in writing his determination of the Fair Market Rent supported by the reasons therefore with counterpart copies to each party. The arbitrators shall arrange for a simultaneous exchange of such proposed resolutions. The role of the third arbitrator shall be to select which of the two proposed resolutions most closely approximates his determination of Fair Market Rent. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution he chooses as most closely approximating his determination shall constitute the decision of the arbitrators and be final and binding upon the parties.

(d) In the event of a failure, refusal or inability of any arbitrator to act, his successor shall be appointed by him, but in the case of the third arbitrator, his successor shall be appointed in the same manner as provided for appointment of the third arbitrator. The arbitrators shall decide the issue within fifteen (15) days after the appointment of the third arbitrator. Any decision in which the arbitrator appointed by Landlord and the arbitrator appointed by Tenant concur shall be binding and conclusive upon the parties. Each party shall pay the fee and expenses of its respective arbitrator and both shall share the fee and expenses of the third arbitrator, if any, and the attorneys' fees and expenses of counsel for the respective parties and of witnesses shall be paid by the respective party engaging such counsel or calling such witnesses.

(e) The arbitrators shall have the right to consult experts and competent authorities to obtain factual information or evidence pertaining to a determination of Fair Market Rent, but any such consultation shall be made in the presence of both parties with full right on their part to

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cross-examine. The arbitrators shall render their decision and award in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease.

#### ARTICLE 16

##### TELEPHONE SERVICE

Notwithstanding any other provision of this Lease to the contrary:

(a) Landlord shall provide Tenant access to the Building intra-building network cable ("INC") as is determined to be available by Landlord in its reasonable discretion. Tenant's access to the INC shall be solely by arrangements made by Tenant, as Tenant may elect, directly with Pacific Bell (or such vendor as Landlord may designate), and Tenant shall pay all reasonable charges as may be imposed by such utility in connection therewith. Pacific Bell's charges shall be deemed to be reasonable. Subject to the foregoing, Landlord shall have no responsibility for providing to Tenant any telephone equipment, including wiring, within the Leased Premises or for providing telephone service or connections from the utility to the Leased Premises, except as required by law.

(b) Tenant shall not alter, modify, add to or disturb any telephone wiring in the Leased Premises or elsewhere in the Building without the Landlord's prior written consent. Tenant shall be liable to Landlord for any damage to the telephone wiring in the Building due to the negligent act or omission, of Tenant or any employee, contractor or other agent of Tenant. Tenant shall have no access to the telephone closets within the Building, except in the manner and under procedures established by Landlord. Tenant shall promptly notify Landlord of any actual or suspected failure of telephone service to the Leased Premises.

(c) All costs incurred by Landlord for the installation, maintenance, repair and replacement of telephone wiring in the Building shall be included as part of the costs described under subsection (i) (B) of Section 13.12(c) relating to Property Maintenance Cost.

(d) Landlord makes no warranty as to the quality, continuity or availability of the telecommunications services in the Building, and Tenant hereby waives any claim against Landlord for any actual or consequential damages (including damages for loss of business) in the event Tenant's telecommunications services in any way are interrupted, damaged or rendered less effective, except to the extent caused by the grossly negligent or willful act or omission by Landlord, its agents or employees. Tenant acknowledges that Landlord meets its duty of care to Tenant with respect to the Building INC by contracting with a reliable third party vendor to assume responsibility for the maintenance and repair thereof (which contract shall contain provisions requiring such vendor to inspect the INC periodically (the frequency of such inspections to be determined by such vendor based on its experience and professional judgment), and requiring such vendor to meet local and federal requirements for telecommunications material and workmanship). Subject to the foregoing, Landlord shall not be liable to Tenant and Tenant waives all claims

against Landlord whatsoever, whether for personal injury, property damage, loss of use of the Leased Premises, or otherwise, due to the interruption or failure of telephone services to the Leased Premises. Except to the extent arising from Landlord's gross

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negligence or willful misconduct, Tenant hereby holds Landlord harmless and agrees to indemnify, protect and defend Landlord from and against any liability for any damage, loss or expense due to any failure or interruption of telephone service to the Leased Premises . Tenant agrees to obtain loss of rental insurance adequate to cover any damage, loss or expense occasioned by the interruption of telephone service.

ARTICLE 17

FIRST RIGHT TO NEGOTIATE

If (i) there then exists no default by Tenant, (ii) Tenant, any assignee pursuant to a Permitted Transfer or any Affiliate shall be in possession of the entire Leased Premises, (iii) this Lease is still in full force and effect, (iv) the entire fourth floor of the Building (the "ROFR Space") is marketed to lease by Landlord, (v) the Landlord does not elect to use the ROFR Space for its own purposes or lease it to OEM or an Affiliate of Landlord, and (vi) Landlord desires to lease to a third party that is not OEM or an Affiliate of Landlord, then Landlord shall notify Tenant in writing of such offer or desire to lease such "ROFR" Space as soon as reasonably practicable. Any such notice by Landlord shall contain all the relevant terms on which Landlord is willing to lease the "ROFR" Space. Tenant may, by giving notice to Landlord within fifteen (15) days after receipt of such notice from Landlord, elect, at its sole option, to lease the "ROFR" Space on the terms contained in the notice. If Tenant shall have so elected to lease the "ROFR" Space, it shall enter into an amendment of this Lease within thirty (30) days after it shall have received the same from Landlord, confirming the lease of such "ROFR" Space to Tenant on the such terms, which amendment shall be in a commercially reasonable form mutually acceptable by Landlord and Tenant.

[signature page follows]

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the respective dates below set forth with the intent to be legally bound thereby as of the Effective Date of this Lease first above set forth.

LANDLORD:

ELECTRONICS FOR IMAGING, INC.,  
a Delaware corporation

Dated: February 13, 2003

By: /s/ JOSEPH CUTTS

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Title: CFO  
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TENANT:

EQUINIX OPERATING CO., INC.,  
a Delaware corporation

Dated: February 13, 2003

By: /s/ RENEE F. LANAM

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Title: CFO  
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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Peter F. Van Camp, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 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/ PETER F. VAN CAMP

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Peter F. Van Camp  
Chief Executive Officer

May 15, 2003



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Renee F. Lanam, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 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/ RENE F. LANAM

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Renee F. Lanam  
Chief Financial Officer

May 15, 2003