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

FORM 10-Q

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

For the quarterly period ended **March 31, 2004**

OR

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

For the transition period from _____ to _____

Commission File Number **000-31293**

EQUINIX, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

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

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

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

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

Indicate by check mark whether the registrant is 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, 2004 was 18,108,032.

EQUINIX, INC.

INDEX

	Page No.
Part I. Financial Information	
Item 1. Condensed Consolidated Balance Sheets as of March 31, 2004 and December 31, 2003	3
Condensed Consolidated Statements of Operations for the Three Months Ended March 31, 2004 and 2003	4
Condensed Consolidated Statements of Cash Flows for the Three Months Ended March 31, 2004 and 2003	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	23
Other Factors Affecting Operating Results	34
Item 3. Quantitative and Qualitative Disclosures About Market Risk	42
Item 4. Controls and Procedures	43
Part II. Other Information	
Item 1. Legal Proceedings	44
Item 2. Changes in Securities and Use of Proceeds	44
Item 3. Defaults Upon Senior Securities	44
Item 4. Submission of Matters to a Vote of Security Holders	45
Item 5. Other Information	45
Item 6. Exhibits and Reports on Form 8-K	46
Signatures	52

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

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

	<u>March 31,</u> <u>2004</u>	<u>December 31,</u> <u>2003</u>
(unaudited)		
Assets		
Current assets:		
Cash and cash equivalents	\$ 68,843	\$ 60,428
Short-term investments	19,795	12,543
Accounts receivable, net	10,079	10,178
Prepays and other current assets	2,168	3,139
	<u>100,885</u>	<u>86,288</u>
Property and equipment, net	334,295	343,554
Goodwill	21,412	21,228
Debt issuance costs, net	3,625	5,954
Other assets	6,956	7,508
	<u>467,173</u>	<u>464,532</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	\$ 18,416	\$ 18,880
Accrued interest payable	2,254	1,114
Current portion of debt facilities and capital lease obligations	—	2,689
Current portion of credit facility	—	12,000
Other current liabilities	3,701	3,843
	<u>24,371</u>	<u>38,526</u>
Debt facilities and capital lease obligations, less current portion	—	723
Credit facility, less current portion	—	22,281
Senior notes	—	29,220
Convertible secured notes	30,218	31,683
Convertible subordinated debentures	86,250	—
Deferred rent and other liabilities	23,411	22,022
	<u>164,250</u>	<u>144,455</u>
Stockholders' equity:		
Preferred stock	2	2
Common stock	18	15
Additional paid-in capital	768,058	755,698
Deferred stock-based compensation	(661)	(1,032)
Accumulated other comprehensive income	1,452	1,198
Accumulated deficit	(465,946)	(435,804)
	<u>302,923</u>	<u>320,077</u>
Total liabilities and stockholders' equity	<u>\$ 467,173</u>	<u>\$ 464,532</u>

See accompanying notes to condensed consolidated financial statements.

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

	Three months ended March 31,	
	2004	2003
	(unaudited)	
Revenues	\$ 36,820	\$ 25,435
Costs and operating expenses:		
Cost of revenues	33,785	30,619
Sales and marketing	4,642	4,703
General and administrative	8,242	10,924
Total costs and operating expenses	46,669	46,246
Loss from operations	(9,849)	(20,811)
Interest income	242	70
Interest expense	(4,130)	(4,812)
Loss on debt extinguishment and conversion	(16,211)	—
Net loss before income taxes	(29,948)	(25,553)
Income taxes	(194)	—
Net loss	\$ (30,142)	\$ (25,553)
Net loss per share:		
Basic and diluted	\$ (2.00)	\$ (3.00)
Weighted average shares	15,104	8,512

See accompanying notes to condensed consolidated financial statements.

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

	Three months ended March 31,	
	2004	2003
	(unaudited)	
Cash flows from operating activities:		
Net loss	\$ (30,142)	\$ (25,553)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and accretion	14,315	16,254
Amortization of intangible assets	514	525
Amortization of deferred stock-based compensation	677	958
Non-cash interest expense	2,615	2,086
Allowance for doubtful accounts	70	154
Deferred rent	1,639	833
Loss on disposal of assets	2	—
Loss on debt extinguishment and conversion	16,211	—
Changes in operating assets and liabilities:		
Accounts receivable	29	(1,677)
Prepays and other current assets	971	2,538
Other assets	46	172
Accounts payable and accrued expenses	190	(2,642)
Accrued restructuring charges	(458)	(7,919)
Accrued merger and financing costs	—	(3,768)
Accrued interest payable	(36)	(990)
Other current liabilities	(142)	(366)
Other liabilities	(20)	(163)
	<u>6,481</u>	<u>(19,558)</u>
Cash flows from investing activities:		
Purchase of short-term investments	(17,744)	—
Sales of short-term investments	2,001	—
Maturities of short-term investments	8,500	—
Purchases of property and equipment	(4,908)	(346)
Accrued property and equipment	(196)	—
Sale of restricted cash and short-term investments	—	1,989
	<u>(12,347)</u>	<u>1,643</u>
Cash flows from financing activities:		
Proceeds from exercise of warrants, stock options and employee stock purchase plan	2,060	159
Proceeds from convertible subordinated debentures	86,250	—
Repayment of debt facilities and capital lease obligations	(3,527)	(2,518)
Repayment of credit facility	(34,281)	—
Repayment of senior notes	(30,475)	—
Debt issuance costs	(3,222)	—
Debt extinguishment costs	(2,505)	—
	<u>14,300</u>	<u>(2,359)</u>
Effect of foreign currency exchange rates on cash and cash equivalents	(19)	36
Net increase (decrease) in cash and cash equivalents	8,415	(20,238)
Cash and cash equivalents at beginning of period	60,428	41,216
	<u>\$ 68,843</u>	<u>\$ 20,978</u>
Supplemental cash flow information:		
Cash paid for interest	\$ 1,579	\$ 3,793

See accompanying notes to condensed consolidated financial statements.

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, 2003 has been derived from audited financial statements at that date. The financial statements have been prepared in accordance with the regulations of the Securities and Exchange Commission ("SEC"), but omit certain information and footnote disclosure necessary to present the statements in accordance with generally accepted accounting principles. For further information, refer to the Consolidated Financial Statements and Notes thereto included in Equinix's Form 10-K as filed with the SEC on March 5, 2004. 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.

In February 2004, the Company sold \$86.3 million in aggregate principal of 2.5% Convertible Subordinated Debentures due 2024 to qualified institutional buyers. The Company used the net proceeds from this offering to repay all amounts outstanding under the Credit Facility, the Heller Loan Amendment, the VLL Loan Amendment and the Senior Notes during February and March 2004. All remaining proceeds will be used for general corporate purposes. In addition, in March 2004, holders of the Company's \$10.0 million in Convertible Secured Notes issued in connection with the Crosslink Financing, converted the \$10.0 million of principal into 2.5 million shares of the Company's common stock. The Company refers to this transaction as the "Crosslink Conversion". As a result of the extinguishment of debt associated with the Credit Facility, Heller Loan Amendment, VLL Loan Amendment and the Senior Notes, as well as the Crosslink Conversion, the Company recognized a loss on debt extinguishment and conversion totaling \$16.2 million (see Note 8).

As of March 31, 2004, the Company had \$88.6 million of cash, cash equivalents and short-term investments. The Company believes that this cash, coupled with anticipated cash flows generated from operations, will be sufficient to meet the Company's capital expenditure, working capital, debt service and corporate overhead requirements to meet the Company's currently identified business objectives.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Revenue Recognition and Allowance for Doubtful Accounts

Equinix derives more than 90% of its revenues from recurring revenue streams, consisting primarily of (1) colocation services, such as from the licensing of cabinet space and power; (2) interconnection services, such as cross connects and Gigabit Ethernet ports and (3) managed infrastructure services, such as Equinix Direct, bandwidth and other e-business services such as mail service and managed platform solutions. The remainder of the Company's revenues are from non-recurring revenue streams, such as from the recognized portion of deferred installation revenues, professional services, contract settlements and equipment sales. Revenues from recurring revenue streams are billed monthly and recognized ratably over the term of the contract, generally one to three years. 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 estimated reliably, in which case fees are recognized upon the completion of services. Non-recurring installation fees, although generally paid in a lump sum upon installation, 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. Revenue from bandwidth and equipment is recognized on a gross basis in accordance with EITF Abstract No. 99-19, "Recording Revenue as a Principal versus Net as an Agent", primarily because the Company acts as the principal in the transaction, takes title to products and services and bears inventory and credit risk. Revenue from contract settlements is recognized on a cash basis when no remaining performance obligations exist to the extent that the revenue has not previously been recognized.

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 generally 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 only when the service has been provided and when there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection of the receivable is reasonably assured. It is customary business practice to obtain a signed master sales agreement and sales order prior to recognizing revenue in an arrangement. The Company assesses collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. The Company generally does not request collateral from its customers. 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)

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 March 31,	
	2004	2003
Numerator:		
Net loss	\$(30,142)	\$(25,553)
Denominator:		
Weighted average shares	15,104	8,517
Weighted average unvested shares subject to repurchase	—	(5)
Total weighted average shares	15,104	8,512
Net loss per share:		
Basic and diluted	\$ (2.00)	\$ (3.00)

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,	
	2004	2003
Series A preferred stock	1,868,667	1,868,667
Series A preferred stock warrant	965,674	965,674
Shares reserved for conversion of convertible secured notes	3,660,765	2,785,205
Shares reserved for conversion of convertible subordinated debentures	2,183,548	—
Common stock warrants	237,179	250,836
Common stock options	4,406,678	3,231,870
Common stock subject to repurchase	28	3,671

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Valuation allowances are established when necessary to reduce tax assets to the amounts expected to be realized.

The Company is currently in a net deferred tax asset position, which has been fully reserved. The Company will continue to provide a valuation allowance for the net deferred tax asset until it becomes more likely than not that the net deferred tax asset will be realizable. For the three months ended March 31, 2004, the Company recorded a tax provision of \$194,000, which is primarily attributable to federal alternative minimum tax. No income tax provision was recorded for the three months ended March 31, 2003. The Company expects to be in an alternative minimum tax position throughout the current taxable year. Although the Company recorded this tax provision for the three months ended March 31, 2004 for book purposes, it is not a cash liability due to sufficient stock option deductions, which can be taken for tax return purposes. The Company has recorded this income tax provision within accounts payable and accrued expenses on the accompanying balance sheet as of March 31, 2004, along with other taxes, such as personal and real property taxes (see Footnote 6).

Stock-Based Compensation

The Company accounts for its stock-based compensation plans in accordance with SFAS No. 123, "Accounting for Stock-Based Compensation." As permitted under SFAS No. 123, the Company uses the intrinsic value-based method of Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," to account for its employee stock-based compensation plans. Under APB Opinion No. 25, compensation expense is based on the difference, if any, on the date of grant, between the fair value of the Company's shares and the exercise price of the option.

Unearned deferred compensation resulting from employee option grants is amortized on an accelerated basis over the vesting period of the individual options, in accordance with FASB Interpretation No. 28, "Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans" ("FASB Interpretation No. 28").

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. In addition, in September 2003, the Compensation Committee of the Board of Directors awarded a stock option grant to the Company's chief executive officer at a 15% discount to the then fair market value of the Company's common stock on the date of grant and, as a result, recorded a \$1,093,000 deferred stock-based compensation charge, which is amortized over the three-year vesting period of this grant. As of March 31, 2004, there was a combined total of \$661,000 of deferred stock-based compensation remaining to be amortized as a result of these option grants. The Company expects stock-based compensation expense related to these specific option grants to impact its results of operations through 2006.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

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

	Three months ended March 31,	
	2004	2003
Cost of revenues	\$ 20	\$ 40
Sales and marketing	30	113
General and administrative	627	805
	<u>\$ 677</u>	<u>\$ 958</u>

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 March 31,	
	2004	2003
Net loss as reported	\$(30,142)	\$(25,553)
Stock-based compensation expense included in net loss	677	958
Stock-based compensation expense if SFAS No. 123 had been adopted	(4,052)	(3,425)
Pro forma net loss	<u>\$(33,517)</u>	<u>\$(28,020)</u>
Basic and diluted net loss per share:		
As reported	\$ (2.00)	\$ (3.00)
Pro forma	(2.22)	(3.29)

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,	
	2004	2003
Dividend yield	0%	0%
Expected volatility	100%	135%
Risk-free interest rate	2.80%	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)

Goodwill and Other Intangible Assets

Goodwill and other intangible assets, net, consisted of the following as of March 31, 2004 and December 31, 2003 (in thousands):

	March 31, 2004	December 31, 2003
	(unaudited)	
Goodwill	\$ 21,412	\$ 21,228
Other intangibles:		
Intangible asset - customer contracts	4,009	3,927
Intangible asset - tradename	309	300
Intangible asset - workforce	160	160
	4,478	4,387
Accumulated amortization	(2,701)	(2,106)
	1,778	2,281
	\$ 23,190	\$ 23,509

Other intangible assets, net, are included in other assets on the accompanying balances sheets as of March 31, 2004 and December 31, 2003.

For the three months ended March 31, 2004 and 2003, the Company recorded amortization expense of \$514,000 and \$525,000, respectively. The Company expects to record the following amortization expense during the next five years (in thousands):

Year ending:	
2004	\$ 2,057
2005	60
2006	60
2007	60
2008	55
Total	\$ 2,292

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

2. Santa Clara IBX Acquisition

In December 2003, the Company closed a definitive agreement to sublease an already constructed data center in Santa Clara, California, and acquire certain related assets from Sprint Communications Company, L.P. (“Sprint”). The 160,000 square foot data center became the Company’s 14th IBX hub, expanding its global footprint to over 1.2 million square feet in eleven markets. The Company refers to this transaction as the Santa Clara IBX acquisition (the “Santa Clara IBX Acquisition”).

As a result of the Santa Clara IBX Acquisition, the Company recorded the following assets and liabilities as of December 1, 2003 (in thousands):

Property and equipment	\$ 3,980
Intangible asset - customer contracts	300
Intangible asset - workforce	160
	<u> </u>
Total assets acquired	\$ 4,440
	<u> </u>
Use tax payable	\$ 317
Asset retirement obligation	63
Unfavorable lease obligation	4,060
	<u> </u>
Total liabilities acquired	\$ 4,440
	<u> </u>

The sublease with Sprint, which expires in 2014, has payment terms which based on the findings of an independent valuation appraisal were at a premium to prevailing market rates for similar properties at the time of the Santa Clara IBX Acquisition. As a result, the Company recorded an unfavorable lease liability of \$4,060,000, which will be amortized into rent expense over the term of this sublease. In addition, the Company recorded both a use tax and asset retirement obligation liability in connection with this property.

Pursuant to the terms of the sublease agreement with Sprint, the Company obtained title to certain fixed assets contained within this IBX hub, which had a total deemed fair value of \$3,980,000. Concurrent with the negotiations with Sprint to sublease the property and take over the operations of this IBX hub, the Company also negotiated with the various customers already located within this IBX hub and entered into new contracts with the key customers. The Company also hired a number of Sprint employees that were working within this IBX hub. The customer contracts intangible asset has a useful life of five years, the term of the primary key customer contract, and the workforce intangible asset has a useful life of one year.

3. Related Party Transactions

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, 2004, revenues recognized with related parties, primarily entities affiliated with STT Communications, were \$1,222,000 and as of March 31, 2004, accounts receivable with these related parties was \$992,000. For the three months ended March 31, 2004, costs and services procured with related parties, primarily entities affiliated with STT Communications, were \$466,000 and as of March 31, 2004, accounts payable with these related parties was \$347,000. 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, 2004	December 31, 2003
	(unaudited)	
Accounts receivable	\$ 19,849	\$ 19,164
Unearned revenue	(9,386)	(8,671)
Allowance for doubtful accounts	(384)	(315)
	\$ 10,079	\$ 10,178

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

5. Property and Equipment

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

	March 31, 2004	December 31, 2003
	(unaudited)	
Leasehold improvements	\$ 385,797	\$ 383,574
IBX plant and machinery	65,085	64,557
Computer equipment and software	19,513	18,875
IBX equipment	41,726	40,023
Furniture and fixtures	1,995	1,979
	514,116	509,008
Less accumulated depreciation	(179,821)	(165,454)
	\$ 334,295	\$ 343,554

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, 2004 and December 31, 2003. Amortization of such warrants is included in depreciation expense.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

6. Accounts Payable and Accrued Expenses

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

	March 31, 2004	December 31, 2003
	(unaudited)	
Accounts payable	\$ 3,870	\$ 3,833
Accrued compensation and benefits	3,939	3,655
Accrued taxes	2,989	2,539
Accrued property and equipment	2,258	2,454
Accrued utility and security	1,432	2,017
Accrued professional fees	1,360	1,281
Accrued repairs and maintenance	703	634
Accrued restructuring charges	370	828
Accrued other	1,495	1,639
	\$ 18,416	\$ 18,880

7. Deferred Rent and Other Liabilities

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

	March 31, 2004	December 31, 2003
	(unaudited)	
Deferred rent	\$ 21,520	\$ 19,889
Other liabilities	1,891	2,133
	\$ 23,411	\$ 22,022

The Company leases its IBX hubs and certain equipment under noncancelable operating lease agreements expiring through 2020. The centers' lease agreements typically provide for base rental rates that increase at defined intervals during the term of the lease. In addition, the Company had negotiated rent expense abatement periods in some IBX hubs to better match the phased build-out of certain of its centers. The Company accounts for such abatements and increasing base rentals using the straight-line method over the life of the lease. The difference between the straight-line expense and the cash payment is recorded as deferred rent.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

8. Debt Facilities*Convertible Subordinated Debentures*

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

The Convertible Subordinated Debentures are governed by the Indenture dated February 11, 2004, between the Company, as issuer, and U.S. Bank National Association, as trustee (the “Indenture”). The Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The Convertible Subordinated Debentures are unsecured and rank junior in right of payment to the Company’s existing or future senior debt.

The Convertible Subordinated Debentures are convertible into shares of the Company’s common stock. Each \$1,000 principal amount of Convertible Subordinated Debentures are convertible into 25.3165 shares of the Company’s common stock. This represents an initial conversion price of approximately \$39.50 per share of common stock. As of March 31, 2004, the Convertible Subordinated Debentures were convertible into 2,183,548 shares of the Company’s common stock. Holders of the Convertible Subordinated Debentures may convert their individual debentures into shares of the Company’s common stock only under any of the following circumstances:

- during any calendar quarter after the quarter ending June 30, 2004 (and only during such calendar quarter) if the sale price of the Company’s common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous calendar quarter, is greater than or equal to 120% of the conversion price per share of our common stock, or approximately \$47.40 per share;
- subject to certain exceptions, during the five business-day period after any five consecutive trading-day period in which the trading price per Convertible Subordinated Debenture for each day of that period was less than 98% of the product of the sale price of the Company’s common stock and the conversion rate on each such day;
- if the Convertible Subordinated Debentures have been called for redemption; or
- upon the occurrence of certain specified corporate transactions described in the Indenture, such as a consolidation, merger or binding share exchange in which the Company’s common stock would be converted into cash or property other than securities.

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

The Company may redeem all or a portion of the Convertible Subordinated Debentures at any time after February 15, 2009 at a redemption price equal to 100% of the principal amount of the Convertible Subordinated Debentures, plus accrued and unpaid interest, if any, to but excluding the date of redemption.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Holders of the Convertible Subordinated Debentures have the right to require us to purchase all or a portion of the Convertible Subordinated Debentures on February 15, 2009, February 15, 2014 and February 15, 2019, each of which is referred to as a purchase date. In addition, upon a fundamental change of the Company, as defined in the Indenture, each holder of the Convertible Subordinated Debentures may require us to repurchase some or all of the Convertible Subordinated Debentures at a purchase price equal to 100% of the principal amount plus accrued and unpaid interest.

The Company has considered the guidance in EITF Abstract No. 98-5, "Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios", and has determined that the Convertible Subordinated Debentures do not contain a beneficial conversion feature as the fair value of the Company's common stock on the date of issuance, was less than the stock conversion ratio outlined in the agreement. The Convertible Subordinated Debentures contain two embedded derivatives, a bond parity clause and a contingent interest provision. The embedded derivatives had a zero fair value as of March 31, 2004. The Company will be remeasuring the embedded derivatives each reporting period, as applicable. Changes in fair value will be reported in the statement of operations.

The costs related to the Convertible Subordinated Debentures were capitalized and are being amortized to interest expense using the effective interest method, over the life of the Convertible Subordinated Debentures. Debt issuance costs related to the Convertible Subordinated Debentures, net of amortization, were \$3,200,000 as of March 31, 2004.

Credit Facility

In February 2004, with the proceeds from the Convertible Subordinated Debentures, the Company repaid all amounts outstanding under the Credit Facility, including \$34,281,000 of principal plus accrued and unpaid interest, and terminated the Credit Facility. As a result, the Company recognized a loss on debt extinguishment on this transaction of \$4,405,000, comprised of the write-off of unamortized debt issuance costs totaling \$4,282,000 and other transaction fees of \$123,000. Refer to Loss on Debt Extinguishment and Conversion below.

Heller Loan Amendment

In February 2004, with the proceeds from the Convertible Subordinated Debentures, the Company repaid all amounts outstanding under the Heller Loan Amendment, including \$2,177,000 of principal plus accrued and unpaid interest, and terminated the Heller Loan Amendment. As a result, the Company recognized a loss on debt extinguishment on this transaction of \$267,000, comprised of the write-off of unamortized debt issuance costs and debt discount totaling \$87,000 and other transaction fees of \$180,000. Refer to Loss on Debt Extinguishment and Conversion below.

VLL Loan Amendment

In March 2004, with the proceeds from the Convertible Subordinated Debentures, the Company repaid all amounts outstanding under the VLL Loan Amendment, including \$749,000 of principal plus accrued and unpaid interest, and terminated the VLL Loan Amendment. As a result, the Company recognized a loss on debt extinguishment on this transaction of \$170,000, comprised of the write-off of unamortized debt issuance costs and debt discount totaling \$74,000 and other transaction fees of \$96,000. Refer to Loss on Debt Extinguishment and Conversion below.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Senior Notes

In March 2004, with the proceeds from the Convertible Subordinated Debentures, the Company redeemed all amounts outstanding under the Senior Notes, including \$30,475,000 of principal plus accrued and unpaid interest, and terminated the Senior Notes. The redemption price of the Senior Notes was equal to 106.5% of their principal, which resulted in an additional cash premium paid of \$1,981,000 (the “Senior Note Cash Premium”). As a result, the Company recognized a loss on debt extinguishment on this transaction of \$3,759,000, comprised of the Senior Note Cash Premium, the write-off of unamortized debt issuance costs and debt discount totaling \$1,653,000 and other transaction fees of \$125,000. Refer to Loss on Debt Extinguishment and Conversion below.

Crosslink Conversion

In March 2004, holders of the Company’s Convertible Secured Notes issued in connection with the Crosslink Financing, converted the \$10,000,000 of principal into 2,500,000 shares of the Company’s common stock. The Company refers to this transaction as the “Crosslink Conversion”. As a result of the Crosslink Conversion, the Company recognized a loss on debt conversion on this transaction of \$7,610,000, representing the write-off of unamortized debt discount. Refer to Loss on Debt Extinguishment and Conversion below.

Loss on Debt Extinguishment and Conversion

As a result of the extinguishment of debt associated with the Credit Facility, Heller Loan Amendment, VLL Loan Amendment and the Senior Notes, as well as the Crosslink Conversion, the Company recognized a total loss on debt extinguishment and conversion totaling \$16,211,000 as summarized below (in thousands):

	<u>Credit facility</u>	<u>Heller loan amendment</u>	<u>VLL loan amendment</u>	<u>Senior notes</u>	<u>Crosslink conversion</u>	<u>Total</u>
Write-off of debt issuance costs and discounts	\$ 4,282	\$ 87	\$ 74	\$ 1,653	\$ 7,610	\$ 13,706
Senior note cash premium	—	—	—	1,981	—	1,981
Other transaction costs	123	180	96	125	—	524
	<u>\$ 4,405</u>	<u>\$ 267</u>	<u>\$ 170</u>	<u>\$ 3,759</u>	<u>\$ 7,610</u>	<u>\$ 16,211</u>

Maturities

Combined aggregate maturities for the Company’s Convertible Secured Notes and Convertible Subordinated Debentures as of March 31, 2004 are as follows (in thousands) (unaudited):

	<u>Convertible secured notes</u>	<u>Convertible subordinated debentures</u>	<u>Total</u>
2004	\$ —	\$ —	\$ —
2005	—	—	—
2006	—	—	—
2007	33,598	—	33,598
2008 and thereafter	—	86,250	86,250
	<u>33,598</u>	<u>86,250</u>	<u>119,848</u>
Less amount representing unamortized discount	(3,380)	—	(3,380)
	<u>\$ 30,218</u>	<u>\$ 86,250</u>	<u>\$ 116,468</u>

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

9. Stockholders' Equity

On January 1, 2004, pursuant to the provisions of the Company's stock plans, the number of common shares in reserve automatically increased by 905,066 shares for the 2000 Equity Incentive Plan, 301,689 shares for the Employee Stock Purchase Plan and 50,000 shares for the 2000 Director Stock Option Plan.

During the quarter ended March 31, 2004, the Compensation Committee of the Board of Directors granted options to certain employees, including all officers of the Company, to purchase 1,262,000 shares of common stock at a weighted average exercise price of \$28.95 per share under the Company's stock plans.

10. Commitments and Contingencies

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 cases were filed in the United States District Court for the Southern District of New York, purportedly on behalf of investors who purchased the Company's stock between August 10, 2000 and December 6, 2000. The suits allege that the underwriter defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. The plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. It is possible that additional similar complaints may also be filed. In July 2003, a Special Litigation Committee of the Equinix Board of Directors agreed to participate in a settlement with the plaintiffs that is anticipated to include most of the approximately 300 defendants in similar actions. This settlement agreement is subject to court approval and sufficient participation by all defendants in similar actions. Such settlement includes without limitation a guarantee of payments to the plaintiffs in the lawsuits, assignment of certain claims against the underwriters in the Company's IPO to the plaintiffs, and a dismissal of all claims against Equinix and related individuals. Other than legal fees incurred to date, the Company expects that all expenses of settlement, if any, will be paid by the Company's insurance carriers. Until such settlement is finalized, the Company and its officers and directors intend to continue to defend the actions vigorously. 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.

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

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

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

11. Comprehensive Loss

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

	Three months ended March 31,	
	2004	2003
Net loss	\$(30,142)	\$(25,553)
Unrealized gain on available for sale securities	14	—
Foreign currency translation gain (loss)	240	(646)
Comprehensive loss	\$(29,888)	\$(26,199)

There were no significant tax effects on comprehensive loss for the three months ended March 31, 2004 and 2003.

12. 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. 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.

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

	Three months ended March 31,	
	2004	2003
Revenues:		
United States	\$32,021	\$ 21,280
Asia-Pacific	4,799	4,155
	\$36,820	\$ 25,435
Cost of revenues:		
United States	\$29,438	\$ 25,265
Asia-Pacific	4,347	5,354
	\$33,785	\$ 30,619
Income (loss) from operations:		
United States	\$ (7,402)	\$(16,604)
Asia-Pacific	(2,447)	(4,207)
	\$ (9,849)	\$(20,811)

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

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

	March 31, 2004	December 31, 2003
United States	\$332,804	\$ 343,419
Asia-Pacific	34,288	34,825
	<u>\$367,092</u>	<u>\$ 378,244</u>

The Company's goodwill totaling \$21,412,000 and \$21,228,000 as of March 31, 2004 and December 31, 2003, respectively, is part of the Company's Singapore reporting unit, which is reported within the Asia-Pacific segment.

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

	Three months ended March 31,	
	2004	2003
Colocation	\$24,806	\$17,517
Interconnection	6,937	3,902
Managed infrastructure	2,740	2,684
	<u>34,483</u>	<u>24,103</u>
Recurring revenues	34,483	24,103
Non-recurring revenues	2,337	1,332
	<u>\$36,820</u>	<u>\$25,435</u>

Revenue from one customer accounted for 13% of the Company's revenues for the three months ended March 31, 2004. Revenue from this same customer accounted for 17% of the Company's revenues for the three months ended March 31, 2003. No other single customer accounted for more than 10% of the Company's revenues for the three months ended March 31, 2004 and 2003. Accounts receivables from the customer mentioned above accounted for 11% of the Company's gross accounts receivables as of March 31, 2004. Accounts receivables from this same customer also accounted for 18% of the Company's gross accounts receivables as of March 31, 2003. No other single customer accounted for more than 10% of the Company's gross accounts receivables as of March 31, 2004 and 2003.

13. Recent Accounting Pronouncements

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. In December 2003, the FASB released a revised version of FIN 46 clarifying certain aspects of FIN 46 and providing certain entities with exemptions from the requirements of FIN 46. 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 ending after March 15, 2004. The adoption of FIN 46 did not have a material impact on the Company's results of operations, financial position or cash flows.

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 adopted the provisions of SFAS No. 149 during the third 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 May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity". SFAS No. 150 establishes standards for how an issuer classifies and measures in its statement of financial position certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) because that financial instrument embodies an obligation of the issuer. In November 2003, the FASB issued FASB Staff Position No. FASB 150-3 which deferred the measurement provisions of SFAS No. 150 indefinitely for certain mandatorily redeemable non-controlling interests that were issued before November 5, 2003. The FASB plans to reconsider implementation issues and, perhaps, classification or measurement guidance for those non-controlling interests during the deferral period. In 2003, the Company applied certain disclosure requirements of SFAS No. 150. To date, the impact of the effective provisions of SFAS No. 150 have not had a material impact on the Company's results of operations, financial position or cash flows. While the effective date of certain elements of SFAS No. 150 have been deferred, the adoption of SFAS No. 150 when finalized is not expected to have a material impact on the Company's financial position, results of operations or cash flows.

In December 2003, the SEC issued Staff Accounting Bulletin No. 104, "Revenue Recognition" ("SAB 104"), which codifies, revises and rescinds certain sections of SAB No. 101, "Revenue Recognition," in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The changes noted in SAB 104 did not have a material effect on the Company's results of operations, financial position or cash flows.

In March 2004, the FASB approved EITF Issue 03-6 "Participating Securities and the Two-Class Method under FAS 128". EITF Issue 03-6 supersedes the guidance in Topic No. D-95, "Effect of Participating Convertible Securities on the Computation of Basic Earnings per Share", and requires the use of the two-class method of participating securities. The two-class method is an earnings allocation formula that determines earnings per share for each class of common stock and participating security according to dividends declared (or accumulated) and participation rights in undistributed earnings. In addition, EITF Issue 03-6 addresses other forms of participating securities, including options, warrants, forwards and other contracts to issue an entity's common stock, with the exception of stock-based compensation (unvested options and restricted stock) subject to the provisions of Opinion No. 25 and FASB No. 123. EITF Issue 03-6 is effective for reporting periods beginning after March 31, 2004 and should be applied by restating previously reported earnings per share. The Company is currently in the process of evaluating the impact that the adoption of EITF Issue 03-6 will have on its financial position and results of operations.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

14. Subsequent Events

In April 2004, the Company announced that it had entered into a long-term operating lease to expand its IBX footprint with the addition of a new 95,000 square foot data center in the Washington, D.C. metro area. The center is adjacent to the Company's existing Washington D.C. metro area IBX. The addition of the center expands the global Equinix footprint to over 1.3 million square feet. Equinix currently intends to begin placing customers in the center beginning November 1, 2004. This new operating lease will add an additional \$65.0 million in rent expense through 2019. The Company's minimum future operating lease payments for each of the next five fiscal years, including this new Washington, D.C. metro area operating lease, are summarized as follows (in thousands):

Year ending:	
2004	\$ 29,047
2005	34,813
2006	35,724
2007	36,232
2008	35,804
Thereafter	<u>250,710</u>
Total	<u>\$422,330</u>

**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 provides network neutral colocation, interconnection and managed services to enterprises, content companies and systems integrators and the world's largest networks. Through our 14 IBX hubs in the U.S. and Asia-Pacific, customers can directly interconnect with each other for critical traffic exchange requirements. As of March 31, 2004, we had IBX hubs totaling an aggregate of more than 1.2 million gross square feet in the Washington, D.C., New York, Dallas, Chicago, Los Angeles, Honolulu and Silicon Valley areas in the United States and Hong Kong, Singapore, Sydney and Tokyo in the Asia-Pacific region.

In our IBX hubs, customers can directly interconnect with each other for critical traffic exchange requirements. Direct interconnection to our aggregation of networks, which serve more than 90% of the world's Internet routes, allows our customers to increase performance while significantly reducing costs. Based on our network neutral model and the quality of our IBX hubs, we believe we have established a critical mass of customers, comprised of networks, content providers and other enterprise companies. As more customers locate in our IBX hubs, it benefits their suppliers and business partners to do so as well to gain the full economic and performance benefits of direct interconnection. These partners, in turn, pull in their business partners, creating a "network effect" of customer adoption. Our interconnection services enable scalable, reliable and cost-effective interconnection and traffic exchange thus lowering overall cost and increasing flexibility.

This critical mass of customers and the resulting network effect, combined with our improved financial position gained through the completion of a series of financing transactions has resulted in an acceleration of new customer growth and related revenue bookings. Both our existing and new customers continue to gain confidence in our financial stability, which helps make their decision to move their core infrastructure into our IBX hubs easier. While we had generated negative operating cashflow in each annual period since inception, commencing the quarter ended September 30, 2003 we started to generate positive operating cash flow. During this quarter, our recurring revenues grew to a level sufficient to meet our operating cash requirements related to our predominantly fixed cost structure. We considered this quarter to be the inflection point in our business model whereby our revenues were sufficient on an ongoing basis to meet all our operating costs and working capital requirements. Given a large component of our cost of revenues are fixed in nature, we anticipate any growth in revenues from our existing IBX hubs will have a significant incremental flow through to gross profit. As a result of reaching this point in our operating history, we expect to generate cash from our operations during 2004 and expect these operating cash flows to also be sufficient to meet our cash requirements to fund our capital expenditures.

Historically, our market has been served by large telecommunications carriers who have bundled their telecommunication products and services with their colocation offerings. During 2003, a number of these telecommunication carriers reduced their colocation footprint as they exited under-performing markets. In addition, one major telecommunications company, Sprint, announced their plans to exit the colocation and hosting market altogether to focus on their core service offerings, while another telecommunications

company, Cable & Wireless Plc, sold their U.S. assets to another telecommunications company, Savvis Communications Corp, in a bankruptcy auction. Each of these colocation providers owns and operates a network. We do not operate a network, yet have greater than 190 networks operating out of our IBX hubs. As a result, we are able to offer our customers a substantial choice of networks given our network neutrality allowing our customers to choose from numerous network service providers thereby eliminating a single point of failure. We believe this is a distinct advantage we have over our telecommunications company competitors, especially when the telecommunications industry is experiencing so many business challenges and changes as evidenced by the numerous bankruptcies and consolidations within this industry during the past several years. Furthermore, for those customers who do require a fully managed solution that these telecommunications companies typically provide, certain of our other customers, such as IBM and EDS, can provide such a solution within our network rich IBX hubs.

Strategically, we will continue to look at attractive opportunities to grow our market share and selectively improve our footprint and service streams, such as our recent acquisition of the Sprint property in Santa Clara and our recent expansion in the Washington, D.C. metro area (refer to "Recent Developments" below). However, we will continue to be very selective with any similar opportunity. As was the case with these two recent expansions in the Silicon Valley and Washington, D.C. area markets, the criteria will be quality of the design, access to networks, capacity availability in current market location, amount of incremental investment required by us in the targeted property, lead-time to breakeven and in-place customers. Like our two recent expansions, the right combination of these factors may be quite attractive for us. Dependent on the particular deal, these acquisitions may require additional capital expenditures in order to bring these centers up to Equinix standards.

Recent Developments

On February 11, 2004, we sold \$75.0 million in aggregate principal of 2.5% convertible subordinated debentures due 2024 to qualified institutional buyers. Subsequently, on February 18, 2004, we sold an additional \$11.25 million of our debentures to the initial purchasers of these debentures. We refer to this transaction as the "convertible debenture offering". We used the net proceeds from the convertible debenture offering to repay all amounts outstanding under our credit facility and two of our other debt facilities. In addition, we used the proceeds received to redeem our 13% senior notes, which had a total of \$30.5 million of principal outstanding. The effective date of the redemption was March 12, 2004. The redemption price for the senior notes was equal to 106.5% of their principal amount plus accrued and unpaid interest to the redemption date. Lastly, all remaining proceeds from the convertible debenture offering will be used for general corporate purposes.

On March 26, 2004, holders of our 10% \$10.0 million convertible secured notes issued in connection with the Crosslink financing, converted the \$10.0 million of principal into 2.5 million shares of our common stock. We refer to this transaction as the "Crosslink conversion".

We recorded a significant loss on debt extinguishment and conversion totaling \$16.2 million during the quarter ended March 31, 2004, primarily related to the non-cash write-off of debt issuance costs and discounts in connection with the various debt repayments, redemptions and conversions of the underlying debt facilities extinguished or converted, as well as the cash premium that we paid on our 13% senior notes.

On April 22, 2004, we announced that we had entered into a long-term operating lease to expand our IBX footprint with the addition of a new 95,000 square foot data center in the Washington, D.C. metro area. The center is adjacent to our existing Washington D.C. metro area IBX. The addition of the center expands our global footprint to over 1.3 million square feet. We currently intend to begin placing customers in this center beginning November 1, 2004, concurrent with when we begin making rent payments on this property.

Critical Accounting Policies and Estimates

Equinix's financial statements and accompanying notes are prepared in accordance with generally accepted accounting principles in the United States of America. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities,

sales and expenses. These estimates and assumptions are affected by management's application of accounting policies. Critical accounting policies for Equinix include revenue recognition and allowance for doubtful accounts, accounting for income taxes, estimated and contingent liabilities, accounting for property and equipment and impairment of long-lived assets, which are discussed in more detail under the caption "Critical Accounting Policies and Estimates" in the Company's 2003 Annual Report on Form 10-K.

Results of Operations

Three Months Ended March 31, 2004 and 2003

Revenues. Our revenues for the three months ended March 31, 2004 and 2003 were split between the following revenue classifications (dollars in thousands):

	Three months ended March 31,			
	2004	%	2003	%
Recurring revenues	\$ 34,483	94%	\$ 24,103	95%
Non-recurring revenues:				
Installation and professional services	1,643	4%	1,250	5%
Other	694	2%	82	0%
	2,337	6%	1,332	5%
Total revenues	\$ 36,820	100%	\$ 25,435	100%

Our revenues for the three months ended March 31, 2004 and 2003 were geographically comprised of the following (dollars in thousands):

	Three months ended March 31,			
	2004	%	2003	%
U.S. revenues	\$ 32,021	87%	\$ 21,280	84%
Asia-Pacific revenues	4,799	13%	4,155	16%
Total revenues	\$ 36,820	100%	\$ 25,435	100%

We recognized revenues of \$36.8 million for the three months ended March 31, 2004, as compared to revenues of \$25.4 million for the three months ended March 31, 2003, a 45% increase. We segment our business geographically between the U.S. and Asia-Pacific as further discussed below.

Our business is based on a recurring revenue model comprised of colocation, interconnection and managed infrastructure services. We consider these services as recurring as once a customer has been installed in one of our IBX hubs they are billed on a fixed and recurring basis each month for the duration of their contract, which is generally one to three years in length. Our recurring revenues are a significant component of our total revenues comprising 94% of our total revenues for the three months ended March 31, 2004, as compared to 95% in the prior period. Historically, greater than half of our customers order new services each quarter and approximately half of our new orders each quarter are from our already installed customer base.

Our non-recurring revenues are primarily comprised of installation services related to a customer's initial deployment and, professional services that we perform. These services are considered to be non-recurring as they are billed typically once and only upon completion of the installation or professional services work performed. The non-recurring revenues are typically billed on the first invoice distributed to the customer. Installation and professional services revenues increased 31% period over period, primarily due to strong existing and new customer growth during the year. As a percent of total revenues, we expect non-recurring revenues to represent approximately 5% of total revenues in each period. Other non-recurring revenues are comprised primarily of customer settlements, which represent fees paid to us by customers who wish to terminate their contracts with us.

In addition to reviewing recurring versus non-recurring revenues, we look at two other primary metrics when we analyze our revenues: 1) customer count and 2) weighted average percentage utilization. Our customer count increased to 776 as of March 31, 2004 versus 600 as of March 31, 2003, an increase of 29%. Our weighted average utilization rate represents the percentage of our cabinet space billing versus total cabinet space available. Our weighted average utilization rate grew by 12% to 41% as of March 31, 2004 from 29% as of March 31, 2003. Although we have substantial capacity for growth, our utilization rates vary from market to market among our 14 worldwide IBX hubs. We continue to monitor the available capacity in each of our selected markets. To the extent we have limited capacity available in a given market, it may limit our ability for growth in that market. Therefore, consistent with our acquisition of Sprint's Santa Clara property in December 2003 and our expansion into the Washington, D.C. metro area market in April 2004, we will continue to review our available space in our other operating markets.

U.S. Revenues. We recognized U.S. revenues of \$32.0 million for the three months ended March 31, 2004 as compared to \$21.3 million for the three months ended March 31, 2003. U.S. revenues consisted of recurring revenues of \$30.3 million and \$20.3 million, respectively, for the three months ended March 31, 2004 and 2003, a 49% increase. U.S. recurring revenues consist primarily of colocation and interconnection services plus a nominal amount of managed infrastructure services. U.S. recurring revenues for the three months ended March 31, 2004 included revenue generated from the recently acquired Santa Clara IBX hub. Excluding revenue from this acquired U.S. IBX hub, the period over period growth in recurring revenues of 44% was primarily the result of an increase in orders from both our existing customers and new customer growth acquired during the period as reflected in the growth in our customer count and utilization rate as discussed above. In addition, consistent with the growth in our customer base, our interconnection revenues have grown as our customers continue to expand their interconnection activity with each other. As of March 31, 2004, U.S. interconnection revenue represented 22% of total U.S. recurring revenue as compared to 19% in the prior period. We expect our U.S. recurring revenues to continue to grow and remain our most significant source of revenue for the foreseeable future.

In addition, U.S. revenues consisted of non-recurring revenues of \$1.7 million and \$1.0 million, respectively, for the three months ended March 31, 2004 and 2003. Non-recurring revenues are primarily related to the recognized portion of deferred installation, professional services and settlement fees associated with certain contract terminations. Included in U.S. non-recurring revenues are settlement fees of \$414,000 and \$82,000, respectively, for the three months ended March 31, 2004 and 2003. Excluding any settlement fees that we may recognize in the future, we expect our U.S. non-recurring revenues to remain relatively flat or grow only moderately in the foreseeable future.

Asia-Pacific Revenues. We recognized Asia-Pacific revenues of \$4.8 million for the three months ended March 31, 2004 as compared to \$4.2 million for the three months ended March 31, 2003. Asia-Pacific revenues consisted of recurring revenues of \$4.2 million and \$3.8 million, respectively, for the three months ended March 31, 2004 and 2003, consisting primarily of colocation and managed infrastructure services. In addition, Asia-Pacific revenues consisted of non-recurring revenues of \$582,000 and \$340,000, respectively, for the three months ended March 31, 2004 and 2003. Asia-Pacific non-recurring revenues included \$280,000 of contract settlement revenue for the three months ended March 31, 2004. Asia-Pacific revenues are generated from Singapore, Tokyo, Hong Kong and Sydney with Singapore representing approximately 56% and 79%, respectively, of the regional revenues for the three months ended March 31, 2004 and 2003. Our Asia-Pacific revenues are similar to the revenues that we generate from our U.S. IBX hubs; however, our Singapore IBX hub has additional managed infrastructure service revenue, such as mail service and managed platform solutions, which we do not currently offer in any other IBX hub location. The growth in our Asia-Pacific revenues is primarily the result of an increase in the customer base in this region during the past year, particularly in Tokyo and Sydney; however, within this growth is a decrease in low-margin bandwidth revenue in Singapore. We expect our Asia-Pacific revenues to remain relatively flat during the first half of 2004 as this churn of our low-margin bandwidth revenue in Singapore is absorbed. However, excluding this expected drop in bandwidth revenue, we would otherwise expect our Asia-Pacific revenues to begin to grow over the course of the year.

Cost of Revenues. Cost of revenues were \$33.8 million for the three months ended March 31, 2004 versus \$30.6 million for the three months ended March 31, 2003, a 10% increase. The largest cost components of our cost of revenues are depreciation, rental payments related to our leased IBX hubs, utility costs including bandwidth, IBX employees' salaries and benefits, consumable supplies and equipment and

security services. A substantial majority of our cost of revenues are fixed in nature and do not vary significantly from period to period. However, there are certain costs, which are considered variable in nature, including utilities and consumable supplies, that are directly related to growth of services in our existing and new customer base. Given a large component of our cost of revenues are fixed in nature, we anticipate any growth in revenues will have a significant incremental flow through to gross profit.

U.S. Cost of Revenues. U.S. cost of revenues were \$29.4 million for the three months ended March 31, 2004 as compared to \$25.3 million for the three months ended March 31, 2003. U.S. cost of revenues included \$12.7 million and \$12.4 million, respectively, of (i) depreciation expense, (ii) stock-based compensation expense, (iii) accretion expense associated with our asset retirement obligation relating to our various leaseholds and (iv) amortization expense associated with an intangible asset associated with our Santa Clara IBX hub for the three months ended March 31, 2004 and 2003. Included in the U.S. cost of revenues for the three months ended March 31, 2004, were the operating costs associated with the Santa Clara IBX hub acquired on December 1, 2003. Excluding depreciation, stock-based compensation, accretion expense, amortization expense and the costs of operating the Santa Clara U.S. IBX hub, U.S. cost of revenues increased period over period to \$14.9 million for the three months ended March 31, 2004 from \$12.9 million for the three months ended March 31, 2003, a 15% increase. This increase is primarily the result of higher property taxes for certain IBX hubs and increasing utility costs in line with increasing customer installations and revenues attributed to this customer growth. We continue to anticipate that our cost of revenues will increase in the foreseeable future as the occupancy levels in our U.S. IBX hubs increase, however as a percent of revenues, we anticipate our cost of revenues will continue to decline.

Asia-Pacific Cost of Revenues. Asia-Pacific cost of revenues were \$4.3 million for the three months ended March 31, 2004 as compared to \$5.4 million for the three months ended March 31, 2003. Asia-Pacific cost of revenues included \$858,000 and \$1.2 million, respectively, of depreciation expense for the three months ended March 31, 2004 and 2003. Excluding depreciation, Asia-Pacific cost of revenues decreased period over period to \$3.5 million for the three months ended March 31, 2004 from \$4.1 million for the three months ended March 31, 2003, a 15% decrease. This decrease is primarily the result of (i) a decrease in bandwidth costs in Singapore associated with a corresponding decrease in low-margin bandwidth revenue in this location and (ii) a decrease in operating costs in Singapore as a result of the asset sale of one of our two IBX hubs in Singapore that occurred during the fourth quarter of 2003, which left us with just one primary IBX hub in Singapore. Our Asia-Pacific 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 Asia-Pacific cost of revenues will experience moderate growth in the foreseeable future consistent with our anticipated growth in revenues over the course of the year.

Sales and Marketing. Sales and marketing expenses decreased to \$4.6 million for the three months ended March 31, 2004 from \$4.7 million for the three months ended March 31, 2003.

U.S. Sales and Marketing Expenses. U.S. sales and marketing expenses increased to \$3.4 million for the three months ended March 31, 2004 as compared to \$3.3 million for the three months ended March 31, 2004. Included in U.S. sales and marketing expenses were \$45,000 and \$113,000, respectively, of (i) stock-based compensation expense for the three months ended March 31, 2004 and 2003 and (ii) amortization expense associated with an intangible asset in connection with our Santa Clara IBX hub for the three months ended March 31, 2004. Excluding stock-based compensation and amortization expense, U.S. sales and marketing expenses remained relatively flat at \$3.4 million and \$3.2 million, respectively, for the three months ended March 31, 2004 and 2003. 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. We expect to see a nominal increase in U.S. sales and marketing spending in the future, although as a percent of revenues, we anticipate a decline in sales and marketing spending.

Asia-Pacific Sales and Marketing Expenses. Asia-Pacific sales and marketing expenses decreased to \$1.2 million for the three months ended March 31, 2004 as compared to \$1.4 million for the three months

ended March 31, 2003. Included in Asia-Pacific sales and marketing expenses were \$459,000 and \$525,000, respectively, of amortization expense associated with several intangible assets associated with our Singapore operations for the three months ended March 31, 2004 and 2003. Excluding amortization expense, Asia-Pacific sales and marketing expenses decreased moderately to \$795,000 during the three months ended March 31, 2004 down from \$859,000 in the prior period. Our Asia-Pacific sales and marketing expenses consist of the same type of 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 sales and marketing expenses will remain relatively flat in the foreseeable future; however, amortization expense in connection with the Singaporean intangible assets will be completed at the end of 2004.

General and Administrative. General and administrative expenses decreased to \$8.2 million for the three months ended March 31, 2004 from \$10.9 million for the three months ended March 31, 2003.

U.S. General and Administrative Expenses. U.S. general and administrative expenses decreased to \$6.6 million for the three months ended March 31, 2004 as compared to \$9.3 million for the three months ended March 31, 2003. Included in U.S. general and administrative expenses were \$1.3 million and \$3.4 million, respectively, of (i) depreciation expense and (ii) stock-based compensation expense for the three months ended March 31, 2004 and 2003. Excluding depreciation and stock-based compensation expense, U.S. general and administrative expenses decreased to \$5.3 million for the three months ended March 31, 2004, as compared to \$5.9 million for the prior period, an 11% decrease. This decrease is primarily attributable to cost savings associated with the shutdown of an office in Honolulu that was completed in June 2003. General and administrative expenses, excluding depreciation and stock-based compensation, 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. We expect to see a nominal increase in general and administrative spending in the future, although as a percent of revenues, we anticipate a decline in general and administrative spending.

Asia-Pacific General and Administrative Expenses. Asia-Pacific general and administrative expenses remained flat at \$1.6 million for the three months ended March 31, 2004 and 2003. Included in Asia-Pacific general and administrative expenses were \$117,000 and \$156,000, respectively, of depreciation expense for the three months ended March 31, 2004 and 2003. Our Asia-Pacific general and administrative expenses 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.

Interest Income. Interest income increased to \$242,000 from \$70,000 for the three months ended March 31, 2004 and 2003, respectively. Interest income increased due to higher average cash, cash equivalent and short-term investment balances held in interest-bearing accounts during these periods.

Interest Expense. Interest expense decreased to \$4.1 million from \$4.8 million for the three months ended March 31, 2004 and 2003, respectively. The decrease in interest expense was primarily attributable to the reduction in the principal balance outstanding on our credit facility during 2003. These interest expense savings were partially offset by additional non-cash interest expense associated with the \$10.0 million 10% convertible secured notes issued on June 5, 2003 as a result of the Crosslink financing. However, during the quarter ended March 31, 2004, with the proceeds from the convertible debenture offering, we fully paid off the remaining credit facility and two other debt facilities, as well as fully redeemed the remaining 13% senior notes that were outstanding. In addition, in March 2004, the \$10.0 million 10% convertible secured notes issued in connection with the Crosslink financing were converted to 2.5 million shares of our common stock. As a result of these various repayments, redemption and conversion of our older debt facilities, which have been replaced with our \$86.3 million 2.5% convertible subordinated debentures, our interest expense commencing with the second quarter of 2004 will be significantly reduced.

Loss on Debt Extinguishment and Conversion. During the three months ended March 31, 2004, with the proceeds from the convertible debenture offering, we fully paid off the remaining credit facility and two other debt facilities, as well as fully redeemed the remaining 13% senior notes that were outstanding at a premium of 106.5%. In addition, in March 2004, the 10% \$10.0 million convertible secured notes issued in connection with the Crosslink financing were converted to 2.5 million shares of our common stock. As a result of these various repayments, redemption and conversion of our older debt facilities, we recorded a loss on debt extinguishment and conversion of \$16.2 million, comprised primarily of the write-off of the various debt issuance costs and discounts associated with these various debt facilities totaling \$13.7 million, as well as the premium paid to the holders of our 13% senior notes required to redeem these early and other cash transaction costs totaling \$2.5 million. There was no such debt extinguishment or conversion activity during the three months ended March 31, 2003.

Income Taxes. A full valuation allowance is recorded against our deferred tax assets as management cannot conclude, based on available objective evidence, when it is more likely than not that the gross value of its deferred tax assets will be realized. However, for the three months ended March 31, 2004, we recorded \$194,000 of income tax expense representing alternative minimum tax that we expect we will have to pay. We have previously not incurred any significant income tax expense since inception.

Liquidity and Capital Resources

Since inception, we have financed our operations and capital requirements primarily through the issuance of various debt and equity instruments, for aggregate gross proceeds of \$1.1 billion. As of March 31, 2004, our total indebtedness was comprised solely of convertible debt totaling \$119.8 million as outlined below.

During February 2004, we sold \$86.25 million in aggregate principal of 2.5% convertible subordinated debentures due 2024 to qualified institutional buyers. We used the net proceeds from this offering to repay all amounts outstanding under our non-convertible debt as outlined below. All remaining proceeds will be used for general corporate purposes. We refer to this transaction as the “convertible debenture offering”. During March 2004, holders of our 10% \$10.0 million convertible secured notes issued in connection with the Crosslink financing, converted the \$10.0 million of principal into 2.5 million shares of our common stock. We refer to this transaction as the “Crosslink conversion”. We recorded a significant loss on debt extinguishment and conversion totaling \$16.2 million during the quarter ended March 31, 2004, primarily related to the non-cash write-off of debt issuance costs and discounts in connection with the various debt repayments, redemptions and conversions of the underlying debt facilities extinguished or converted, as well as the cash premium that we paid on our 13% senior notes.

As of March 31, 2004, our principal source of liquidity was our \$88.6 million of cash, cash equivalents and short-term investments. We believe that this cash, coupled with our anticipated cash flows generated from operations, will be sufficient to meet our capital expenditure, working capital, debt service and corporate overhead requirements to meet the Company’s currently identified business objectives.

While we had generated negative operating cashflow in each annual period since inception, commencing the quarter ended September 30, 2003 we started to generate positive operating cash flow. During this quarter, our recurring revenues grew to a level sufficient to meet our operating cash requirements related to our predominantly fixed cost structure. We considered this quarter to be the inflection point in our business model whereby our revenues were sufficient on an ongoing basis to meet all our operating costs and working capital requirements. As a result of reaching this point in our operating history, we expect to generate cash from our operations during 2004 and expect these operating cash flows to be sufficient to meet our cash requirements to fund our capital expenditures. Given our limited operating history, we may not achieve our desired levels of profitability. See “Other Factors Affecting Operating Results.”

Uses of Cash

Net cash provided by our operating activities was \$6.5 million for the three months ended March 31, 2004. Net cash used in our operating activities was \$19.6 million for the three months ended March 31,

2003. As described above, we have now reached and are moving beyond the inflection point in our business model whereby our revenues are now sufficient to cover our operating expenses and we are now generating cash from our operations. In prior periods, we used cash primarily to fund our net loss, including cash interest payments on our senior notes and credit facility, although the majority of the operating cash flows used during the three months ended March 31, 2003 related to the liquidation of accrued obligations at December 31, 2002 attributed to accrued merger and financing transactions and restructuring activities. In addition, we have experienced particularly strong collections of our accounts receivables during the quarter ended March 31, 2004, which was reflected in our days sales outstanding (DSO), which dropped from 39 days for the quarter ended March 31, 2003 to less than 30 days for the quarter ended March 31, 2004. In the future, we expect our DSO to remain at the 30 to 35 day level. As described above, we expect that we will continue to generate cash from our operating activities throughout 2004 and beyond.

Net cash used in investing activities was \$12.3 million for the three months ended March 31, 2004. Net cash provided by investing activities was \$1.6 million for the three months ended March 31, 2003. Net cash used in investing activities during the three months ended March 31, 2004 was primarily to fund capital expenditures to bring our recently acquired IBX hub in Santa Clara to Equinix standards and to support our growing customer base, as well as the net purchase of short-term investments. 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. For 2004, we anticipate that our cash used in investing activities, excluding the purchase and sale of short-term investments, will be attributed to the funding of our capital expenditures.

Net cash generated by financing activities was \$14.3 million for the three months ended March 31, 2004. Net cash used by financing activities was \$2.4 million for the three months ended March 31, 2003. Net cash generated by financing activities for the three months ended March 31, 2004, was primarily the result of the \$86.25 million in gross proceeds from our convertible debenture offering, offset by \$70.8 million in payments on our credit facility, senior notes and other debt facilities and capital lease obligations, as well as debt extinguishment costs associated with paying down these facilities. Cash used in financing activities for the three months ended March 31, 2003 was primarily attributable to the scheduled monthly payments of our debt facilities and capital lease obligations.

Debt Obligations – Non-Convertible Debt

As of March 31, 2004, we no longer had any indebtedness from non-convertible debt. Prior to this, our non-convertible debt was comprised of our senior notes, credit facility, and other debt facilities and capital lease obligations 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 December 31, 2003, a total of \$30.5 million of senior note principal remained outstanding, which was presented, net of unamortized discount, on our balance sheet at \$29.2 million. In March 2004, with the net proceeds from our convertible debenture offering, we exercised our right to redeem all of our senior notes. The redemption price for the senior notes was equal to 106.5% of their principal amount plus accrued and unpaid interest to the redemption date. As a result, we recognized a loss on debt extinguishment on this transaction of \$3.8 million, comprised of the 6.5% premium that we paid to redeem the senior notes, the write-off of debt issuance costs and debt discount and other transaction fees.

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, which was fully drawn down during 2001. This facility was amended at various times during 2001, 2002 and 2003. As of December 31, 2003, a total of \$34.3 million of principal remained outstanding under the credit facility. In February 2004, with the net proceeds from our convertible debenture offering, we repaid all amounts outstanding under our credit facility and terminated the credit facility. As a result, we recognized a loss on debt extinguishment on this transaction of \$4.4 million, comprised primarily of the write-off of debt issuance costs as well as some other transaction fees.

Other Debt Facilities and Capital Lease Obligations 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 bore 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. As of December 31, 2003, principal of \$847,000 remained outstanding. In March 2004, with the net proceeds from our convertible debenture offering, we paid off this other debt facility in full. As a result, we recognized a loss on debt extinguishment on this transaction of \$0.2 million, comprised of the write-off of debt issuance costs and discount as well as some other transaction fees.

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 bore interest at 13.0% and was repayable over 36 months. As of December 31, 2003, principal of \$2.5 million remained outstanding. In February 2004, with the net proceeds from our convertible debenture offering, we paid off this other debt facility in full. As a result, we recognized a loss on debt extinguishment on this transaction of \$0.2 million, comprised of the write-off of debt issuance costs and discount as well as some other transaction fees.

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 bore interest at an average rate of 6.4% per annum and were repayable over 30 months. As of December 31, 2003, principal of \$201,000 remained outstanding. These capital leases were fully paid down by March 31, 2004.

Debt Obligations – Convertible Debt

Convertible Secured Notes. 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 due November 2007. The interest on the convertible secured note is payable in kind in the form of additional convertible secured notes, which we refer to as “PIK notes”. During 2003, we issued \$3.6 million in PIK notes. The convertible secured note and PIK notes issued to STT Communications are convertible into our preferred and common stock at a price of \$9.18 per underlying share, which represents 3.7 million shares as of March 31, 2004, and are convertible anytime at the option of STT Communications. After December 31, 2004 and through December 31, 2005, we may convert 95% of the STT Communications’ convertible secured notes and after December 31, 2005, we may convert 100% of these convertible secured notes upon certain conditions, including if the closing price of our common stock exceeds \$32.12 per share for thirty consecutive trading days.

In June 2003, entities affiliated with Crosslink Capital made a \$10.0 million strategic investment in the company in the form of 10% convertible secured notes due November 2007. The interest on the convertible secured notes was payable in kind in the form of additional convertible secured notes commencing on the second anniversary of the closing of this transaction. In March 2004, the holders of these notes converted them into 2.5 million shares of our common stock. As a result, we recognized a loss on debt conversion on this transaction of \$7.6 million, comprised primarily of the write-off of debt discount.

As of March 31, 2004, a total of \$33.6 million of convertible secured notes were outstanding, which is presented, net of unamortized discount, on our balance sheet at \$30.2 million. All interest expense associated with our convertible secured notes, including the amortization of the unamortized discount of \$3.4 million, represents non-cash interest expense in our statements of operation and cash flow as no cash is expended for this interest.

Convertible Subordinated Debentures. During February 2004, we sold \$86.25 million in aggregate principal of 2.5% convertible subordinated debentures due 2024 to qualified institutional buyers. We used the net proceeds from this offering to repay all amounts outstanding under our credit facility and two of our other debt facilities, as well as fully redeemed our remaining 13% senior notes. All remaining proceeds will be used for general corporate purposes. The interest on the convertible subordinated debentures is payable semi-annually every February and August commencing August 2004. Unlike our convertible secured notes, the interest on our convertible subordinated debentures will be payable in cash. Our convertible subordinated debentures will be convertible into 2.2 million shares of our common stock.

Holders of the convertible subordinated debentures may require us to purchase all or a portion of their debentures on February 15, 2009, February 15, 2014 and February 15, 2019, in each case at a price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest. In addition, holders of the convertible subordinated debentures may convert their debentures into shares of our common stock upon certain defined circumstances, including during any calendar quarter after the quarter ending June 30, 2004 if the closing price of our common stock exceeds \$47.40 per share for twenty consecutive trading days. We may redeem all or a portion of the debentures at any time after February 15, 2009 at a redemption price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest.

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, 2004 (in thousands):

	Convertible secured notes	Convertible subordinated debentures	Operating leases	Total
2004	\$ —	\$ —	\$ 21,332	\$ 21,332
2005	—	—	31,173	31,173
2006	—	—	31,991	31,991
2007	33,598	—	32,406	66,004
2008	—	—	31,882	31,882
2009 and thereafter	—	86,250	201,402	319,534
	<u>\$ 33,598</u>	<u>\$ 86,250</u>	<u>\$ 350,186</u>	<u>\$ 470,034</u>

With respect to the operating lease for one of our New York metropolitan area IBXs, our landlord has the right to increase our rentable space on December 31, 2004 when the lease for the current tenant's portion of the aggregate property lease expires. As a result, commencing fiscal 2005, our total rent expense associated with this IBX hub could double. This increase in our operating lease commitments is reflected in the table presented above. We are currently working with this landlord, as well as the current tenant of that space, and expect to minimize this additional cost to us; however, there can be no assurances that we will be successful in reducing this commitment.

On April 22, 2004, we announced that we had entered into a long-term operating lease to expand our IBX footprint with the addition of a new 95,000 square foot data center in the Washington, D.C. metro area. The center is adjacent to our existing Washington D.C. metro area IBX. The addition of the center expands our global footprint to over 1.3 million square feet. We currently intend to begin placing customers in this center beginning November 1, 2004. This new operating lease will add an additional \$65.0 million in rent expense through 2019, which is not reflected in the table above.

We expect to spend approximately \$5.0 million during the remainder of 2004 to bring our recently announced Washington, D.C. metro area IBX expansion space to Equinix standards. In addition, we expect to spend an additional \$5.0 to \$7.0 million on this expansion space during 2005 in order to meet anticipated customer demand.

Strategically, we will continue to look at attractive opportunities to grow our market share and selectively improve our footprint and service streams, such as our recent acquisition of the Sprint property in Santa Clara and our recently announced expansion in the Washington, D.C. metro area market. However, we will continue to be very selective with any similar opportunity. As was the case with these two recent expansions in the Silicon Valley and Washington, D.C. area markets, the criteria will be quality of the design, access to networks, capacity availability in current market location, amount of incremental investment required by us in the targeted property, lead-time to breakeven and in-place customers. Like these two recent expansions, the right combination of these factors may be quite attractive for us. Dependent on the particular deal, these acquisitions may require additional capital expenditures in order to bring these centers up to Equinix standards.

Recent Accounting Pronouncements

In January 2003, the FASB issued FASB Interpretation No. 46, or 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. In December 2003, the FASB released a revised version of FIN 46 clarifying certain aspects of FIN 46 and providing certain entities with exemptions from the requirements of FIN 46. 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 ending after March 15, 2004. The adoption of Fin 46 did not have a material impact on our results of operations, financial position or cash flows.

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, or 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 adopted the provisions of SFAS No. 149 during the third quarter of 2003. The adoption of this statement has not had a material impact on our results of operations, financial position or cash flows.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity." SFAS No. 150 establishes standards for how an issuer classifies and measures in its statement of financial position certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or an asset in some circumstances) because that financial instrument embodies an obligation of the issuer. In November 2003, the FASB issued FASB Staff Position No. FASB 150-3 which deferred the measurement provisions of SFAS No. 150 indefinitely for certain mandatorily redeemable non-controlling interests that were issued before November 5, 2003. The FASB plans to reconsider implementation issues and, perhaps, classification or measurement guidance for those non-controlling interests during the deferral period. In 2003, we applied certain disclosure requirements of SFAS No. 150. To date, the impact of the effective provisions of SFAS No. 150 have not had a material impact on our results of operations, financial position or cash flows. While the effective date of certain elements of SFAS No. 150 have been deferred, the adoption of SFAS No. 150 when finalized is not expected to have a material impact on our financial position, results of operations or cash flows.

In December 2003, the SEC issued Staff Accounting Bulletin No. 104, "Revenue Recognition" ("SAB 104"), which codifies, revises and rescinds certain sections of SAB No. 101, "Revenue Recognition," in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The changes noted in SAB 104 did not have a material effect on our results of operations, financial position or cash flows.

In March 2004, the FASB approved EITF Issue 03-6 "Participating Securities and the Two-Class Method under FAS 128". EITF Issue 03-6 supersedes the guidance in Topic No. D-95, "Effect of Participating Convertible Securities on the Computation of Basic Earnings per Share", and requires the use of the two-class method of participating securities. The two-class method is an earnings allocation formula that determines earnings per share for each class of common stock and participating security according to dividends declared (or accumulated) and participation rights in undistributed earnings. In addition, EITF Issue 03-6 addresses other forms of participating securities, including options, warrants, forwards and other contracts to issue an entity's common stock, with the exception of stock-based compensation (unvested

options and restricted stock) subject to the provisions of Opinion No. 25 and FASB No. 123. EITF Issue 03-6 is effective for reporting periods beginning after March 31, 2004 and should be applied by restating previously reported earnings per share. We are currently in the process of evaluating the impact that the adoption of EITF Issue 03-6 will have on our financial position and results of operations.

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

We have a limited operating history and we face challenges typically experienced by early-stage companies.

We were founded in June 1998 and did not recognize any revenue until November 1999. 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, or i-STT, and Pihana Pacific, Inc., or Pihana. We refer to this transaction as the combination. 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.

Equinix's, i-STT's and Pihana's businesses have 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.

We have incurred losses since inception and incurred losses of approximately \$21.6 million for 2002 (this includes the benefit of a gain on debt extinguishment of \$114.2 million), i-STT has incurred losses since inception and incurred losses of approximately \$8.0 million for 2002 and Pihana has incurred losses since inception and incurred losses of approximately \$148.5 million (this includes restructuring and impairment charges of \$113.3 million) for the same period. For the year ended December 31, 2003, the combined company incurred additional losses of \$84.2 million and for the three months ended March 31, 2004, the combined company incurred additional losses of \$30.1 million. Until the quarter ended September 30, 2003, the combined company did not generate cash from operations. There can be no guarantee that the combined company will become profitable and the combined company may continue to incur additional losses. Even if we achieve profitability, given the competitive and evolving nature of the industry in which we operate, we may not be able to sustain or increase profitability on a quarterly or annual basis.

We expect our operating results to fluctuate.

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

- acquisition of additional IBX hubs;
- demand for space and services at our IBX hubs;
- changes in general economic conditions and specific market conditions in the telecommunications and Internet industries;

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- 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 operating costs attributable to our real and personal property tax obligations related to our IBX hubs;
 - the timing and magnitude of operating expenses, capital expenditures and expenses related to the expansion of sales, marketing, operations and acquisitions, if any, of complementary businesses and assets; and
 - the cost and availability of adequate public utilities, including power.

Any of the foregoing factors, or other factors discussed elsewhere in this report, could have a material adverse effect on our business, results of operations, and financial condition. Although the company has experienced growth in revenues in recent quarters, this growth rate is not necessarily indicative of future operating results. It is possible that the company may never generate net income 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 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 our stock.

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

We believe that our ability to use our tax net operating losses, or NOLs, in any taxable year is subject to limitation under Section 382 of the Code as a result of the significant change in the ownership of our stock that resulted from the combination. We expect that almost all of our NOLs accrued prior to December 31, 2002 will expire unused as a result of this limitation. In addition to the limitations on NOL carryforward utilization described above, we believe that Section 382 of the Code will also significantly limit our ability to use the depreciation and amortization on our assets, as well as certain losses on the sale of our assets, to the extent that such depreciation, amortization and losses reflect unrealized depreciation that was inherent in such assets as of the date of the combination. These limitations will cause us to pay taxes at an earlier date and in greater amounts than would occur absent such limitations.

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 year ended December 31, 2003, the combined company recognized 15% of its revenues outside North America. For the three months ended March 31, 2004, the combined company recognized 13% of its revenues outside North America. We anticipate that, for the foreseeable future, approximately 15% 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. 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 Australia, Hong Kong and Singapore dollars. 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. 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:

- 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.

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

We may seek to acquire additional IBX centers, 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 our existing stockholders' ownership interest and may delay, or prevent, our profitability. These acquisitions may also expose us to risks such as:

- the possibility that we may not be able to successfully integrate acquired businesses or achieve the level of quality in such businesses to which our customers are accustomed;
- the possibility that senior management may be required to spend considerable time negotiating agreements and integrating acquired businesses; and
- the possible loss or reduction in value of acquired businesses.

On October 27, 2003, we announced that we signed an agreement to sublease Sprint's E|Solutions Internet Center in Santa Clara and acquire certain related assets. Such sublease went into effect on December 1, 2003. In negotiating this transaction we were only able to conduct limited due diligence and received limited representations and warranties. If the subleased facility and acquired assets are not in the condition we believe them to be in, we may be required to incur substantial additional costs to repair the acquired facility and related assets. If incurred, these costs could materially adversely affect our business, financial condition and results of operations.

We cannot assure you that we would successfully overcome these risks or any other problems encountered with these acquisitions.

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

As of March 31, 2004, STT Communications owned approximately 16.4% of our outstanding voting stock. In addition, STT Communications is not prohibited from buying shares of our stock in public or private transactions. Because of the diffuse ownership of our stock, STT Communications has significant influence over matters requiring our stockholder approval. Following the expiration on December 31, 2004 of restrictions on STT Communications preventing it from converting its convertible secured notes and warrants into voting stock, STT Communications may own more than 40% of our voting stock. As a result, 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. STT also has a right of first offer which entitles them to participate in an offering of our equity securities, or securities convertible into our equity securities, to maintain their ownership percentage prior to such offering.

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 would constitute "United States real property interests" within the meaning of Section 897(c) of the Code. Under Section 897(c) of the Code, our capital stock issued to STT Communications would generally constitute "United States real property interests" at such point in time that the fair market value of the "United States real property interests" owned by us equals or exceeds 50% of the sum of the aggregate fair market values of (a) our "United States real property interests," (b) our interests in real property located outside the U.S., and (c) any other assets held by us which are used or held for use in our trade or business. Currently, the fair market value of our "United States real property interests" is significantly below the 50% threshold. However, in order to assure compliance with the FIRPTA covenant, we may be limited with respect to the business opportunities we may pursue, particularly if the business opportunities would increase the amounts of "United States real property interests" owned by us or decrease the amount of other assets owned by us. In addition, we may take proactive steps to avoid our capital stock being deemed "United States real property interest", including, but not limited to, (a) a sale-leaseback transaction with respect to some or all of our real property interests, or (b) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all of our outstanding stock (this reorganization would require the submission of that transaction to our stockholders for their approval and the consummation of that exchange). We will take these actions only if such actions are commercially reasonable for Equinix and our stockholders.

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, including STT Communications. We continue to have contractual and other business relationships and may engage in material transactions with affiliates of STT Communications. Circumstances may arise in which the interests of STT Communications' affiliates may conflict with the interests of our other stockholders. In addition, 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. We cannot assure you that any conflicts of interest will be resolved in our favor.

A significant number of shares of our capital stock have been issued during 2002 and 2003 and 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, to Crosslink Capital, Inc. and its affiliates (collectively, "Crosslink") in connection with Crosslink's purchase of our Series A-2 Convertible Secured Notes, and to the public and STT Communications in connection with our recent follow-on equity offering. The shares of common stock issued in the senior note exchange are currently freely tradeable. The shares of common stock issued in connection with the combination have been registered for resale as of June 30, 2003 and the shares of common stock issued upon exercise of the warrants issued in connection with the Crosslink financing have been registered for resale as of September 22, 2003. The shares sold to the public and STT Communications in connection with our recent follow-on equity offering are freely tradeable by the public, subject, in the case of STT Communications, to compliance with Rule 144 resale restrictions applicable to affiliates. Subject to the restrictions described in our proxy statement dated December 12, 2002, the convertible secured 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. The 2,500,000 shares of common stock issued upon conversion of the convertible secured notes issued in the Crosslink financing are in the process of being registered for resale on an S-3 originally filed with the Securities and Exchange Commission on April 22, 2004. 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. We cannot assure you that we will achieve revenue growth, cost savings or other business economies.

A significant number of our shares may be sold into the public market if STT Communications defaults on its credit facility which could cause the market price of our common stock to drop significantly.

As of March 31, 2004, STT Communications held 2,970,414 shares of our common stock and held securities convertible into 6,495,106 additional shares of our common stock. STT Communications has pledged to its lenders its ownership interest in the majority of its secured notes and warrants purchased in the financing and its common and preferred stock issued in the combination as collateral for its secured credit facility. If STT Communications defaults on its credit facility, the stock, warrants and secured notes owned by STT Communications could be transferred to its lenders or sold to third parties. In the event of default, the new owner of the secured notes and warrants could convert them into our common stock and sell them, along with the common stock, into the public market. 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.

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 in 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 the telecommunications carriers' customers to encourage them 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. We cannot assure you that

any carrier will elect to offer its services within our IBX hubs or that 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.

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.

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. We have recently acquired two IBX hubs not built by us. If these recently acquired IBX hubs and acquired assets are not in the condition we believe them to be in, we may be required to incur substantial additional costs to repair the acquired facilities. The services we provide in each of our IBX hubs 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. We have service level commitment obligations to certain of our customers. As a result, service interruptions or significant equipment damage in our IBX hubs could result in service level commitments to these customers. 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 are 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 fail to provide the required services, our business, financial condition and results of operations could be materially adversely impacted.

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, 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.

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 in the Northeast in 2003, 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 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 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 to pay our suppliers for the term of the underlying contracts. The payment of these obligations without a corresponding payment from customers will reduce our financial resources and may have a material adverse affect on our financial performance and operating results.

IBM accounts for a significant portion of our revenues, and the loss of IBM as a customer could significantly harm our business, financial condition and results of operations.

For the three months ended March 31, 2004, IBM accounted for 13% of our revenue and as of March 31, 2004 accounted for 11% of our accounts receivable. For the three months ended March 31, 2003, IBM accounted for 17% of our revenue and as of March 31, 2003 accounted for 18% of our accounts receivable. We expect that IBM will continue to account for a significant portion of our revenue for the foreseeable future, although we expect revenues received from IBM to decline as a percentage of our total revenues as we add new customers in our IBX hubs. If we lose IBM as a customer, our business, financial condition and results of operations could be adversely affected.

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.

Because of their greater financial resources, some of our competitors have the ability to adopt aggressive pricing policies, especially if they have been able to restructure their debt or other obligations. As a result, in the future, we may suffer from pricing pressure that would adversely affect our ability to generate revenues and adversely affect our operating results. In addition, these competitors could offer colocation on neutral terms, and may start doing so in the same metropolitan areas 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 by building new centers or converting existing centers that some of our competitors are in the process of divesting. 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.

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

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

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

A customer's decision to license cabinet space in one of our IBX hubs and to purchase additional services typically involves a significant commitment of resources. In addition, some customers will be reluctant to commit to locating in our IBX 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 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. In July 2003, a special litigation committee of our board of directors agreed to

participate in a settlement with the plaintiffs. The settlement agreement is subject to court approval and sufficient participation by defendants in similar actions. If the proposed settlement is not approved by the court or a sufficient number of defendants do not participate in the settlement, 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. 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.

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. We have limited experience with such international regulatory issues and substantial resources may be required to comply with regulations or bring any non-compliant business practices into compliance with such regulations. In addition, the development of the market for online commerce and the displacement of traditional telephony service by the Internet and related communications services may prompt an increased call for more stringent consumer protection laws or other regulation both in the U.S. and abroad that may impose additional burdens on companies conducting business online and their service providers. The compliance with, adoption or modification of, laws or regulations relating to the Internet, or interpretations of existing laws, could have a material adverse effect on our business, financial condition and results of operation.

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

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

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. 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 convertible subordinated debentures is based on quoted market prices. The estimated fair value of our convertible subordinated debentures as of March 31, 2004 approximated cost at approximately \$86.3 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% of our revenues and approximately 18% of our costs were in the Asia-Pacific region, and a large portion of those revenues and costs were 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. Going forward, we continue to expect that approximately 15% of our revenues and costs will continue to be generated and incurred in the Asia-Pacific region in currencies other than the U.S. dollar, similar to 2003.

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

Commodity Price Risk

Certain operating costs incurred by us are subject to price fluctuations caused by the volatility of underlying commodity prices. The commodities most likely to have an impact on our results of operations in the event of 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. We do not employ forward contracts or other financial instruments to hedge commodity price risk.

Item 4. Controls and Procedures

(a) *Evaluation of Disclosure Controls and Procedures.* Our Chief Executive Officer and our Chief Financial Officer, after evaluating the effectiveness of the Company's "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934 (Exchange Act) Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this quarterly report, have concluded that our disclosure controls and

procedures are effective based on their evaluation of these controls and procedures required by paragraph (b) of Exchange Act Rules 13a-15 or 15d-15.

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

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

On July 30, 2001 and August 8, 2001, putative shareholder class action lawsuits were filed against us, certain of our officers and directors, 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. In July 2003, a Special Litigation Committee of the Equinix Board of Directors agreed to participate in a settlement with the plaintiffs that are anticipated to include most of the approximately 300 defendants in similar actions. This settlement agreement is subject to court approval and sufficient participation by all defendants in similar actions. Such settlement includes without limitation a guarantee of payments to the plaintiffs in the lawsuits, assignment of certain claims against the underwriters in our IPO to the plaintiffs, and a dismissal of all claims against Equinix and related individuals. Other than legal fees incurred to date, Equinix expects that all expenses of settlement, if any, will be paid by our insurance carriers. Until such settlement is finalized, we and our officers and directors intend to continue to defend the actions vigorously.

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.

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

(a) Exhibits.

<u>Exhibit Number</u>	<u>Description of Document</u>
2.1(8)	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(10)	Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.
3.2(10)	Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock.
3.3(9)	Bylaws of the Registrant.
3.4(13)	Certificate of Amendment of the Bylaws of the Registrant.
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4.
4.2(2)	Form of Registrant's Common Stock certificate.
4.10(9)	Registration Rights Agreement (See Exhibit 10.75).
4.11	Indenture (see Exhibit 10.99).
4.12	Registration Rights Agreement (see Exhibit 10.100).
10.2(1)	Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).
10.5(1)	Form of Indemnification Agreement between the Registrant and each of its officers and directors.
10.8(1)	The Registrant's 1998 Stock Option Plan.
10.9 (1)+	Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.
10.10 (1)+	Lease Agreement with Market Halsey Urban Renewal, LLC, dated as of May 3, 1999.
10.11 (1)+	Lease Agreement with Laing Beaumeade, dated as of November 18, 1998.
10.12 (1)+	Lease Agreement with Rose Ventures II, Inc., dated as of June 10, 1999.
10.13 (1)+	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 (1)+	First Amendment to Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of October 28, 1999.
10.15 (1)+	Lease Agreement with Nexcomm Asset Acquisition I, L.P., dated as of January 21, 2000.
10.16 (1)+	Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of December 15, 1999.

10.20 (1)+	Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.21(1)	Customer Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.23(1)	Purchase Agreement between International Business Machines Corporation and Equinix, Inc. dated May 23, 2000.
10.24(2)	2000 Equity Incentive Plan.
10.25(2)	2000 Director Option Plan.
10.26(2)	2000 Employee Stock Purchase Plan.
10.27(2)	Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.
10.28 (3)+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of July 1, 2000.
10.29 (3)+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of May 1, 2000.
10.30 (3)+	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 (3)+	Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.
10.42 (4)+	First Amendment to Deed of Lease with TrizecHahn Beaumeade Technology Center LLC, dated as of March 22, 2001.
10.43 (4)+	First Lease Amendment Agreement with Market Halsey Urban Renewal, LLC, dated as of May 23, 2001.
10.44 (4)+	First Amendment to Lease with Nexcomm Asset Acquisition I, L.P., dated as of April 18, 2000.
10.45 (4)+	Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of December 18, 2000.
10.46(5)	First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 26, 2001.
10.48(5)	2001 Supplemental Stock Plan.
10.53(6)	Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of May 20, 2002.
10.54 (6)+	Amended and Restated Master Service Agreement by and between International Business Machines Corporation and Equinix, Inc., dated as of May 1, 2002.

Exhibit Number	Description of Document
10.56 (7)+	Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.
10.58(7)	Form of Severance Agreement entered into by the Company and each of the Company's executive officers.
10.60(9)	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(9)	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(9)	Tenancy Agreement over units #05-05, #05-06, #05-07 and #05-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.63(9)	Tenancy Agreement over units #03-01 and #03-02 of Block 28 Ayer Rajah Crescent, Singapore 139959.
10.64(9)	Tenancy Agreement over units #05-01, #05-02, #05-03 and #05-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.65(9)	Tenancy Agreement over units #03-05, #03-06, #03-07 and #03-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.69(9)	Lease Agreement with Downtown Properties, LLC dated April 10, 2000, as amended.
10.70(9)	Lease Agreement with Comfort Development Limited dated November 10, 2000.
10.71(9)	Lease Agreement with PacEast Telecom Corporation dated June 15, 2000, as amended.
10.72(9)	Lease Agreement Lend Lease Real Estate Investments Limited dated October 20, 2000.
10.73(9)	Lease Agreement with AIPA Properties, LLC dated November 1, 1999, as amended.
10.74(9)	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.
10.75(9)	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.
10.76(9)	Securities Purchase Agreement by and among Equinix, the Guarantors and the Purchasers, dated as of October 2, 2002.
10.77(9)	Series A-1 Convertible Secured Note Due 2007 issued to i-STT Investments Pte Ltd on December 31, 2002.
10.78(9)	Preferred Stock Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.79(9)	Change in Control Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.

Exhibit Number	Description of Document
10.83(11)	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(12)	Sublease by and between Electronics for Imaging as Landlord and Equinix Operating Co., Inc. as Tenant dated February 12, 2003.
10.90(13)	Expatriate Agreement with Philip Koen, President and Chief Operating Officer of the Company, dated as of June 24, 2003.
10.92(14)	Renewal of Tenancy Agreements over units #06-01, #06-05/08, #05-05/08, #03-05/08 & #05-01/04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.94(15)	Fourth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of November 21, 2003.
10.95 (15)+	Sublease Agreement between Sprint Communications Company, L.P. and Equinix Operating Co., Inc. dated October 24, 2003.
10.96(15)	Tenancy Agreement over units #03-01, #03-02, #03-03, #03-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.97(15)	Lease Agreement with JMA Robinson Redevelopment, LLC, as successor in interest to Carrier Central L.A., Inc., dated as of November 30, 2003.
10.98	Purchase Agreement between Equinix, Inc. and Citigroup Global Markets Inc. as representative of the initial purchasers named therein dated February 5, 2004.
10.99	Indenture among Equinix, Inc. and U.S. Bank National Association as Trustee dated February 11, 2004.
10.100	Registration Rights Agreement between Equinix, Inc. and Citigroup Global Markets Inc. as representative of the initial purchasers named therein dated February 11, 2004.
10.101	First Amendment to Lease Agreement dated September 1, 1999, between Lakeside Purchaser L.L.C. as successor in interest to Carlyle-Core Chicago, LLC and Equinix Operating Co., Inc.
16.1(1)	Letter regarding change in certifying accountant.
21.1(9)	Subsidiaries of Equinix.
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) 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).

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- (2) 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).
 - (3) 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.
 - (4) 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.
 - (5) 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.
 - (6) 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.
 - (7) 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.
 - (8) Incorporated herein by reference to Annex A of Equinix's Definitive Proxy Statement filed with the Commission December 12, 2002.
 - (9) 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.
 - (10) 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.
 - (11) Incorporated herein by reference to exhibit 10.1 in the Registrant's filing on Form 8-K on May 1, 2003.
 - (12) 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 March 31, 2003.
 - (13) 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, 2003.
 - (14) 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, 2003.
 - (15) 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, 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.
- (b) Reports on Form 8-K.

On January 13, 2004, the Company filed a Current Report on Form 8-K to file certain non-GAAP information that the Company had presented in a live webcast held on January 9, 2004. The Company attached a reconciliation of EBITDA to GAAP as required by Regulation G.

On January 22, 2004, the Company filed a Current Report on Form 8-K to announce that the stock selling plans that the Company's executive officers had entered into for asset diversification purposes in accordance with SEC Rule 10b5-1, would automatically resume on January 22, 2004, following a contractual lock-up period with the Company's underwriters in connection with the Company's public stock offering on November 18, 2003.

On February 4, 2004, the Company filed a Current Report on Form 8-K to file the Company's press release from February 4, 2004, in which the Company reported its 2003 fourth quarter and year-end results.

On February 4, 2004, the Company filed a Current Report on Form 8-K to announce that it intends to offer \$75 million aggregate principal amount of Convertible Subordinated Debentures due 2024 (the "Debentures") to be offered pursuant to Rule 144A under the Securities Act of 1933, as amended, and Regulation S thereunder.

On February 6, 2004, the Company filed a Current Report on Form 8-K to announce that it agreed to sell the Debentures previously announced on February 4, 2004 in a press release dated February 5, 2004.

On February 20, 2004, the Company filed a Current Report on Form 8-K to announce that it sold an additional \$11.25 million of Debentures to the initial purchasers of the Debentures previously announced on February 5, 2004. The Company further announced that it used the proceeds from the Debentures to repay its Credit Facility.

EQUINIX, INC.

\$75,000,000 2.50% Convertible Subordinated Debentures due 2024

PURCHASE AGREEMENT

New York, New York
February 5, 2004

Citigroup Global Markets Inc.
As Representative of the several
Initial Purchasers named in
Schedule I hereto

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

Equinix, Inc., a corporation organized under the laws of Delaware (the "Company"), proposes to issue and sell to the several parties named in Schedule I hereto (the "Initial Purchasers"), for whom you (the "Representative") are acting as Representative, \$75,000,000 principal amount of its 2.50% Convertible Subordinated Debentures due 2024 (the "Firm Securities"). The Company also proposes to grant to the Initial Purchasers an option to purchase up to \$11,250,000 additional principal amount of such Debentures to cover over-allotments, if any (the "Option Securities") and, together with the Firm Securities, the "Securities"). The Securities are convertible into shares of Common Stock, par value \$0.001 per share (the "Common Stock"), of the Company at the conversion price set forth herein. The Securities are to be issued under an indenture (the "Indenture"), to be dated as of the Closing Date (as defined herein), between the Company and U.S. Bank National Association, as trustee (the "Trustee"). The Securities will have the benefit of a registration rights agreement (the "Registration Rights Agreement"), to be dated as of the Closing Date, among the Company and the Initial Purchasers, pursuant to which the Company will agree to register the resale of the Securities under the Act subject to the terms and conditions therein specified. To the extent there are no additional parties listed on Schedule I other than you, the term Representative as used herein shall mean you as the Initial Purchaser, and the terms Representative and Initial Purchaser shall mean either the singular or plural as the context requires. The use of the neuter in this Agreement shall include the feminine and masculine wherever appropriate. Certain terms used herein are defined in Section 18 hereof.

The sale of the Securities to the Initial Purchaser will be made without registration of the Securities or the Common Stock issuable upon conversion thereof under the Act in reliance upon exemptions from the registration requirements of the Act.

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum, dated February 4, 2004 (as amended or supplemented at the date thereof, including any and all exhibits thereto and any information incorporated by reference therein, the "Preliminary Memorandum"), and a final offering memorandum, dated February 5, 2004 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, the "Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company, the Securities and the Common Stock issuable upon conversion thereof. The Company hereby confirms that it has authorized the use of the Preliminary Memorandum and the Final Memorandum, and any amendment or supplement thereto, in connection with the offer and sale of the Securities by the Initial Purchasers. Unless stated to the contrary, any references herein to the terms "amend", "amendment" or "supplement" with respect to the Final Memorandum shall be deemed to refer to and include any information filed under the Exchange Act subsequent to the Execution Time but prior to the Closing that is incorporated by reference therein.

SECTION 1. Representations and Warranties. The Company represents and warrants to each Initial Purchaser as set forth below in this Section 1.

(a) The Preliminary Memorandum, at the date thereof, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Initial Purchaser through the Representative expressly for use therein.

(b) At the Execution Time and on the Closing Date, the Final Memorandum did not and on any date on which Option Securities are purchased, if such date is not the Closing Date (a "Settlement Date"), the Final Memorandum (and any amendment or supplement thereto) will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to the information contained in or omitted from the Final Memorandum (or any amendment or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Initial Purchaser specifically for inclusion in the Final Memorandum (or any amendment or any supplement thereto).

(c) Subject to the accuracy of the representations and warranties of the Initial Purchasers in Section 4 hereof, none of the Company, its Affiliates, or any person acting on its or their behalf has, directly or indirectly, made offers or sales of any Security, or solicited offers to buy, any Security under circumstances that would require the registration of the Securities or the Common Stock issuable upon conversion thereof under the Act.

(d) Subject to the accuracy of the representations and warranties of the Initial Purchasers in Section 4 hereof, none of the Company, its Affiliates, or any person acting on its or their behalf has: (i) engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities or (ii) engaged in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities or the Common Stock issuable upon conversion thereof; and each of the Company, its Affiliates and each person acting on its or their behalf has complied with the offering restrictions requirement of Regulation S.

(e) The Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the Act.

(f) No registration under the Act of the Securities is required for the offer and sale of the Securities to or by the Initial Purchasers in the manner contemplated herein and in the Final Memorandum.

(g) The Company is not and, after giving effect to the offering and sale of the Securities, will not be an “investment company”, as such term is defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”).

(h) The Company is subject to and in compliance with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act.

(i) The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase any Securities of the Company (except as contemplated in this Agreement).

(j) Each of the Company, Equinix-DC, Inc. and Equinix OpCo, Inc. has been duly incorporated and is validly existing as a corporation in good standing under the laws of Delaware with power and authority (corporate and other) to own its properties and conduct its business as described in the Final Memorandum. The Company is duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, or is subject to no liability or disability by reason of the failure to be so qualified in any such jurisdiction.

(k) The subsidiaries listed on Annex A attached hereto are the only “significant subsidiaries” of the Company (as defined in Rule 1-02 of Regulation S-X under the Act).

(l) The Company has an authorized capitalization as set forth in the Final Memorandum, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and the Securities conform to the description thereof contained in the Final Memorandum; the shares of Common Stock initially issuable upon conversion of the Securities have been duly authorized and, when issued upon conversion of the Securities against payment of the conversion price, will be validly issued, fully paid and nonassessable; the Board of Directors

of the Company has duly and validly adopted resolutions reserving such shares of Common Stock for issuance upon conversion of the Securities; the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities or the shares of Common Stock issuable upon conversion thereof; and, except as set forth in the Final Memorandum, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of, or ownership interests in, the Company are outstanding.

(m) The statements set forth in the Final Memorandum under the caption "Description of the Debentures", insofar as they purport to constitute a summary of the terms of the Securities and under the captions "Plan of Distribution" and "Description of Common Stock" included or incorporated by reference in the Final Memorandum insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair.

(n) This Agreement has been duly authorized, executed and delivered by the Company; the Indenture has been duly authorized and, assuming due authorization, execution and delivery thereof by the Trustee, when executed and delivered by the Company, will constitute a legal, valid, binding instrument enforceable against the Company in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity); the Securities have been duly authorized, and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Initial Purchasers, will be duly executed and delivered by the Company and will constitute the legal, valid and binding obligations of the Company entitled to the benefits of the Indenture (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity) and will be convertible into Common Stock in accordance with their terms; and the Registration Rights Agreement has been duly authorized by the Company and, when executed and delivered by the Company, will constitute the legal, valid, binding and enforceable instrument of the Company (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity), provided that no representation is made with respect to Section 6 thereof.

(o) The issue and sale of the Securities by the Company and the compliance by the Company with all of the provisions of this Agreement, the Indenture and the Registration Rights Agreement and the consummation of the transactions contemplated herein or therein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject, except for such breach, violation or default as would not have a Material

Adverse Effect on the business, financial condition, results of operations or prospects of the Company (a "Material Adverse Effect") or the performance by the Company of its obligations hereunder, nor will such action result in any violation of the provisions of the Certificate of Incorporation or Bylaws of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of the properties of the Company; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the consummation by the Company of the transactions contemplated herein, in the Indenture or in the Registration Rights Agreement, except such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Initial Purchasers and, in the case of the Registration Rights Agreement, such as will be obtained under the Act and the Trust Indenture Act.

(p) Other than as set forth in the Final Memorandum, the Company has good and marketable title to all personal property owned by it free and clear of all liens, encumbrances and defects except such as are described in the Final Memorandum or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company; and any real property and buildings held under lease by the Company are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company.

(q) Other than as set forth in the Final Memorandum, there are no legal or governmental proceedings pending to which the Company is a party or of which any property of the Company is the subject which, if determined adversely to the Company, would individually or in the aggregate (i) have a material adverse effect on the performance of this Agreement, the Indenture or the Registration Rights Agreement, or the consummation of any of the transactions contemplated hereby or (ii) have a Material Adverse Effect; and, to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(r) The Company is not in violation of its Certificate of Incorporation, Bylaws or other organizational documents or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound.

(s) PricewaterhouseCoopers, LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries, are independent public accountants as required by the Act.

(t) Other than fixed assets taxes relating to the Company's Japan IBX and certain business related taxes relating to the Company's business operations in Japan, which taxes are currently under review by the Company, the Company has filed all

foreign, federal, state and local tax returns that are required to be filed or has requested extensions thereof and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith or as would not, individually or in the aggregate, have a Material Adverse Effect.

(u) No labor dispute with the employees of the Company exists or, to the Company's knowledge, is imminent.

(v) The Company is insured by insurers of recognized financial responsibility; the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(w) Except as otherwise disclosed in the Final Memorandum, the Company owns or possesses adequate rights to use, all material trademarks, service marks, trademark registrations, service mark registrations, domain names, copyrights, licenses, inventions and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) necessary for the conduct of its business as described in the Final Memorandum, and the Company has no reason to believe that the conduct of its business will conflict with, and has not received any notice of any claim of conflict with, any such rights of others, except any failure or conflict as would not, individually or in the aggregate, have a Material Adverse Effect; and to the Company's knowledge, the Company has not infringed or is infringing any trademarks, service marks, trademark registrations, service mark registrations, domain names or copyrights, which infringement could reasonably be expected to result in a Material Adverse Effect.

(x) Except as otherwise disclosed in the Final Memorandum, to the Company's knowledge, the Company possesses adequate rights to use all material patents necessary for the conduct of its business; to the Company's knowledge, no valid United States patent is or would be infringed by the activities of the Company, except any failure or infringement as would not, individually or in the aggregate, have a Material Adverse Effect; there are no actions, suits or proceedings pending relating to patents or proprietary information to which the Company is a party or of which any property of the Company is subject and, to the Company's knowledge, no such actions, suits or proceedings are threatened by governmental authorities or others; the Company is not aware of any claim by others that the Company is infringing or otherwise violating the patents or other intellectual property of others and is not aware of any rights of third parties to any of its licensed patents or licenses which could materially affect its use thereof.

(y) The Company is not aware of any material fact with respect to the patent applications of the Company presently on file that (a) would preclude the issuance of patents with respect to such applications or (b) would lead such counsel to conclude that

such patents, when issued, would not be valid and enforceable in accordance with applicable regulations.

(z) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(aa) Other than its wholly-owned subsidiaries, the Company does not own any shares of capital in or any interest in any corporation, partnership, association, joint venture or other business entity.

(bb) Other than as set forth or contemplated in the Final Memorandum, the Company has not sustained since the date of the latest audited financial statements of the Company included in the Final Memorandum any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since the respective dates as of which information is given in the Final Memorandum, there has not been any change in the capital stock (except pursuant to the exercise of options and warrants), short-term debt, long-term debt, net current assets or net assets of the Company or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company.

(cc) Neither the Company nor any of its affiliates does business with the government of Cuba or with any person or affiliate located in Cuba within the meaning of Section 517.075, Florida Statutes.

(dd) Except as disclosed in the Final Memorandum, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a registration statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Act, other than those that have been effectively satisfied or waived in writing.

Any certificate signed by any officer of the Company and delivered to the Representative or counsel for the Initial Purchasers in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Initial Purchaser.

SECTION 2. Purchase and Sale. (a) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Initial Purchaser, and each Initial Purchaser agrees, severally and not jointly, to purchase from the Company, at a purchase price of 96.75% of the principal amount thereof, plus accrued interest, if any, from February 11, 2004 to the Closing Date, the principal amount of Firm Securities set forth opposite such Initial Purchaser's name in Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants an option to the several Initial Purchasers to purchase, severally and not jointly, the Option Securities at the same purchase price as the Initial Purchasers shall pay for the Firm Securities, plus accrued interest, if any, from February 11, 2004 to the settlement date for the Option Securities. The option may be exercised in whole or in part at any time (but not more than once) on or before the 30th day after the date of the Final Memorandum upon written or telegraphic notice by the Representative to the Company setting forth the principal amount of Option Securities as to which the several Initial Purchasers are exercising the option and the settlement date. Delivery of the Option Securities, and payment therefor, shall be made as provided in Section 3 hereof. The principal amount of Option Securities to be purchased by each Initial Purchaser shall be the same percentage of the total principal amount of Option Securities to be purchased by the several Initial Purchasers as such Initial Purchaser is purchasing of the Firm Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional Securities.

SECTION 3. Delivery and Payment. (a) Delivery of and payment for the Firm Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 A.M., New York City time, on February 11, 2004, or at such time on such later date not more than three Business Days after the foregoing date as the Representative shall designate, which date and time may be postponed by agreement between the Representative and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representative for the respective accounts of the several Initial Purchasers against payment by the several Initial Purchasers through the Representative of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to the account specified by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company unless the Representative shall otherwise instruct.

(b) If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representative on the date specified by the Representative (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Initial Purchasers, against payment by the several Initial Purchasers through the Representative of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to the account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representative on the settlement date for the Option Securities, and the obligation of the Initial Purchasers to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions,

certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

SECTION 4. Offering by Initial Purchasers. (a) Each Initial Purchaser acknowledges that the Securities and the Common Stock issuable upon conversion thereof have not been and will not be registered under the Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Act.

(b) Each Initial Purchaser, severally and not jointly, represents and warrants to and agrees with the Company that:

(i) it has not offered or sold, and will not offer or sell, any Securities within the United States or to, or for the account or benefit of, U.S. persons (x) as part of their distribution at any time or (y) otherwise until one year after the later of the commencement of the offering and the date of closing of the offering except:

(A) to those it reasonably believes to be “qualified institutional buyers” (as defined in Rule 144A under the Act) or

(B) in accordance with Rule 903 of Regulation S;

(ii) neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D) in the United States;

(iii) in connection with each sale pursuant to Section 4(b)(i)(A), it has taken or will take reasonable steps to ensure that the purchaser of such Securities is aware that such sale is being made in reliance on Rule 144A;

(iv) any information provided by the Initial Purchasers to publishers of publicly available databases about the terms of the Securities shall include a statement that the Securities have not been registered under the Act and are subject to restrictions under Rule 144A under the Act and Regulation S;

(v) it will not engage in hedging transactions with regard to the Securities prior to the expiration of the distribution compliance period as (defined in Regulation S), unless in compliance with the Act;

(vi) neither it, nor any of its Affiliates nor any person acting on its or their behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities;

(vii) it has not entered and will not enter into any contractual arrangement with any distributor (within the meaning of Regulation S) with respect to the

distribution of the Securities, except with its affiliates or with the prior written consent of the Company;

(viii) it and they have complied and will comply with the offering restrictions requirement of Regulation S;

(ix) at or prior to the confirmation of sale of Securities (other than a sale of Securities pursuant to Section 4(b)(i)(A) of this Agreement), it shall have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Securities from it during the distribution compliance period (within the meaning of Regulation S) a confirmation or notice to substantially the following effect:

“The Securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the “Act”) and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until one year after the later of the commencement of the offering and the date of closing of the offering, except in either case in accordance with Regulation S or Rule 144A under the Act. Additional restrictions on the offer and sale of the Securities and the Common Stock issuable upon conversion thereof are described in the offering memorandum for the Securities. Terms used in this paragraph have the meanings given to them by Regulation S.”

(x) it acknowledges that additional restrictions on the offer and sale of the Securities and the Common Stock issuable upon conversion thereof are described in the Final Memorandum;

(xi) it has not offered or sold and, prior to the date six months after the date of issuance of the Securities, will not offer or sell any Securities to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;

(xii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom;

(xiii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received by it in connection with the issue or sale of any Securities, in circumstances in which section 21(1) of the FSMA does not apply to the Company; and

(xiv) it is an “accredited investor” (as defined in Rule 501(a) of Regulation D).

SECTION 5. Agreements. The Company agrees with each Initial Purchaser that:

(a) The Company will furnish to each Initial Purchaser and to counsel for the Initial Purchasers, without charge, during the period referred to in paragraph (c) below, as many copies of the Final Memorandum and any amendments and supplements thereto as they may reasonably request.

(b) The Company will not amend or supplement the Final Memorandum, other than by filing documents under the Exchange Act that are incorporated by reference therein, without the prior written consent of the Representative; provided, however, that, prior to the date that is the earlier of 30 days after the date hereof and the date on which the Initial Purchasers purchase the Option Securities in full, the Company will not file any document under the Exchange Act that is incorporated by reference in the Final Memorandum unless, prior to such proposed filing, the Company has furnished the Representative with a copy of such document for its review and the Representative has not reasonably objected to the filing of such document. The Company will promptly advise the Representative when any document filed under the Exchange Act that is incorporated by reference in the Final Memorandum shall have been filed with the Commission.

(c) If at any time prior to the completion of the sale of the Securities by the Initial Purchasers (as determined by the Representative), any event occurs as a result of which the Final Memorandum, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it should be necessary to amend or supplement the Final Memorandum to comply with applicable law, the Company will promptly (i) notify the Representative of any such event; (ii) subject to the requirements of paragraph (b) of this Section 5, prepare an amendment or supplement that will correct such statement or omission or effect such compliance; and (iii) supply any supplemented or amended Final Memorandum to the several Initial Purchasers and counsel for the Initial Purchasers without charge in such quantities as they may reasonably request.

(d) The Company will arrange, if necessary, for the qualification of the Securities for sale by the Initial Purchasers under the laws of such jurisdictions as the Representative may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject. The Company will promptly advise the Representative of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(e) During the period of two years after the Closing Date, the Company will not resell any Securities or shares of Common Stock issued upon conversion thereof that have been acquired by it.

(f) None of the Company or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any Security, or solicit offers to buy any Security, under circumstances that would require the registration of the Securities or Common Stock issuable upon conversion thereof under the Act.

(g) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(h) So long as any of the Securities or the Common Stock issuable upon the conversion thereof are "restricted securities" within the meaning of Rule 144(a)(3) under the Act, the Company will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, provide to each holder of such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(i) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any directed selling efforts with respect to the Securities, and each of them will comply with the offering restrictions requirement of Regulation S. Terms used in this paragraph have the meanings given to them by Regulation S.

(j) Any information provided by the Company to publishers of publicly available databases about the terms of the Securities shall include a statement that the Securities have not been registered under the Act and are subject to restrictions under Rule 144A under the Act and Regulation S.

(k) The Company will cooperate with the Representative and use its commercially reasonable best efforts to permit the Securities to be eligible for clearance and settlement through The Depository Trust Company.

(l) The Company will reserve and keep available at all times, free of pre-emptive rights, the full number of shares of Common Stock issuable upon conversion of the Securities.

(m) Except as set forth in Exhibit C ("Permitted Issuances"), the Company will not for a period of 90 days following the Execution Time, without the prior written consent of Citigroup Global Markets Inc., directly or indirectly, offer, sell, contract to sell, pledge, otherwise dispose of, enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or

effective economic disposition due to cash settlement or otherwise) by the Company or any Affiliate of the Company or any person in privity with the Company or any Affiliate of the Company of, file (or participate in the filing of) a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act in respect of, any shares of capital stock of the Company or any securities convertible into, or exercisable or exchangeable for, shares of capital stock of the Company (other than the Securities), or publicly announce an intention to effect any such transaction; provided, however, that the Company may issue and sell Common Stock or securities convertible into or exchangeable for Common Stock pursuant to any employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company described in the Final Memorandum and in effect at the Execution Time, and the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding at the Execution Time and described in the Final Memorandum.

(n) For a period of 90 days after the date of this Agreement, the Company will not take, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(o) Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion price.

(p) The Company agrees to pay its costs and expenses relating to the following matters: (i) the preparation of the Indenture and the Registration Rights Agreement, the issuance of the Securities, the fees of the Trustee and the issuance of the Common Stock upon conversion of the Securities; (ii) the preparation, printing or reproduction of the Preliminary Memorandum and the Final Memorandum and each amendment or supplement to either of them; (iii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the Preliminary Memorandum and the Final Memorandum, and all amendments or supplements to either of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Securities; (iv) the preparation, printing, authentication, issuance and delivery of certificates for the Securities; (v) any stamp or transfer taxes in connection with the original issuance and sale of the Securities; (vi) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Securities; (vii) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states and any other jurisdictions specified pursuant to Section 5(d) (including filing fees and the reasonable fees and expenses of counsel for the Initial Purchasers relating to such registration and qualification); (viii) admitting the Securities for trading in the PORTAL Market; (ix) the transportation and other expenses incurred by or on behalf of Company representatives in connection with presentations to prospective purchasers of the Securities; (x) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including

local and special counsel) for the Company; and (xi) all other costs and expenses incurred by the Company incident to the performance by the Company of its obligations hereunder. Subject to the provisions of Section 7 hereof, the Representative shall be responsible for all expenses incurred by it in connection with this Agreement and the transactions contemplated herein, including, without limitation, the fees and expenses of counsel to the Representative.

(q) The Company will not knowingly take any action or omit to take any action (such as issuing any press release relating to any Securities without an appropriate legend) which may result in the loss by any of the Initial Purchasers of the ability to rely on any stabilization safe harbor provided by the Financial Services Authority under the FSMA.

SECTION 6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Firm Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties of the Company contained herein at the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Company shall have requested and caused Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP, counsel for the Company, to furnish to the Representative its opinion, dated the Closing Date and addressed to the Representative, to the effect that:

(i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of Delaware, with corporate power and authority to own its properties and conduct its business as described in the Final Memorandum;

(ii) The Company has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of California, Illinois, New Jersey, Ohio, Texas and Virginia;

(iii) The Company has an authorized capitalization as set forth in the Final Memorandum, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are, to the knowledge of such counsel, fully paid and non-assessable; the shares of Common Stock initially issuable upon conversion of the Securities have been duly authorized and, when issued upon conversion of the Securities against payment of the conversion price, will be validly issued, fully paid and nonassessable; the Board of Directors of the Company has duly and validly adopted resolutions reserving such shares of Common Stock for issuance upon conversion of the Securities;

(iv) The Indenture has been duly authorized, executed and delivered;

(v) The Registration Rights Agreement has been duly authorized, executed and delivered and constitutes the legal, valid, binding and enforceable obligation of the Company (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity), provided that no opinion is given with respect to Section 6 thereof;

(vi) The statements set forth in the Final Memorandum under the captions "Plan of Distribution" and "Description of Common Stock" included or incorporated by reference in the Final Memorandum insofar as they purport to describe the provisions of the laws referred to therein, are accurate;

(vii) The statements set forth in the Final Memorandum under the caption "Description of the Debentures", insofar as they purport to constitute a summary of the conversion terms of the Securities, fairly present such information;

(viii) To such counsel's knowledge and other than as set forth in the Final Memorandum, there are no legal or governmental proceedings pending to which the Company is a party which, if determined adversely to the Company, would individually or in the aggregate have a Material Adverse Effect; and, to such counsel's knowledge, no such proceedings are threatened by governmental authorities or threatened by others;

(ix) The Final Memorandum and any further amendments and supplements thereto made by the Company prior to the Closing Date (other than the financial statements and related schedules thereto and the financial data derived from the financial statements included therein, as to which such counsel need express no belief) comply as to form in all material respects with the requirements of the Act; although they do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Final Memorandum, except for those referred to in the opinion in subsection (iv) and (vi) of this section 6(a), they have no reason to believe that, as of its date, the Final Memorandum or any further amendment or supplement thereto made by the Company prior to the Closing Date (other than the financial statements and related schedules thereto and the financial data derived from the financial statements included therein or other financial and statistical data, as to which such counsel need express no opinion) contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or that, as of the Closing Date, the Final Memorandum or any further amendment or supplement thereto made by the Company prior to the Closing Date (other than the financial statements and related schedules thereto and the financial data derived from the financial statements included therein or other financial data, as to which such counsel need express no opinion) contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and they do not know

of any contracts or other documents of a character required to be described in the Final Memorandum which are not filed or described as required.

(x) This Agreement has been duly authorized, executed and delivered by the Company;

(xi) The issue and sale of the Securities being delivered at the Closing Date by the Company and the compliance by the Company with all of the provisions of this Agreement, the Indenture and the Registration Rights Agreement and the consummation of the transactions contemplated herein or therein will not result in any violation of the provisions of the Certificate of Incorporation or Bylaws of the Company or, with respect to this Agreement and the Registration Rights Agreement only, any statute or any order, rule or regulation known to such counsel of any court or governmental agency or body having jurisdiction over the Company or any of the properties of the Company;

(xii) Assuming (a) the accuracy of the representations and warranties of the Company and of the Initial Purchasers set forth in this Agreement, (b) the due performance by the Company and the due performance by the Initial Purchasers of the covenants and agreements set forth in this Agreement, (c) compliance by the Initial Purchasers with the offering and transfer procedures and restrictions described in the Final Memorandum, (d) the accuracy of the representations and warranties made in accordance with this Agreement and the Final Memorandum by purchasers to whom the Initial Purchasers initially resell Securities and (e) that purchasers to whom the Initial Purchasers initially resell Securities receive a copy of the Final Memorandum prior to such sale, neither (i) the offer, sale and delivery of the Securities to the Initial Purchasers in the manner contemplated by this Agreement and the Final Memorandum nor (ii) the initial resale of the Securities by the Initial Purchasers in the manner contemplated by this Agreement and the Final Memorandum require registration under the Act and the Indenture does not require qualification under the Trust Indenture Act, it being understood that such counsel need not express an opinion as to any subsequent resale of any Securities or any shares of Common Stock issuable upon conversion thereof;

(xiii) The Company is not an "investment company", as such term is defined in the Investment Company Act; and

(xiv) To such counsel's knowledge, the Company is not in violation of its Certificate of Incorporation or Bylaws;

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the jurisdiction of incorporation of the Company, the State of New York or the federal laws of the United States, to the extent they deem proper and specified in such opinion, upon the opinion of other counsel of good standing whom they believe to be reliable and who are satisfactory to counsel for the Initial Purchasers; and (B) as to matters of fact, to the extent they deem proper, on certificates of responsible officers of the

Company and public officials. References to the Final Memorandum in this Section 6(a) include any amendment or supplement thereto at the Closing Date.

(b) The Company shall have requested and caused Brandi L. Galvin, General Counsel for the Company, to have furnished to the Representative her opinion, dated the Closing Date and addressed to the Representative, to the effect that:

(i) The issue and sale of the Securities being delivered at the Closing Date by the Company and the compliance by the Company with all of the provisions of this Agreement, the Indenture and the Registration Rights Agreement and the consummation of the transactions contemplated herein or therein will not result in a breach or violation of any of the terms or provisions of, or constitute a default under, any agreement or instrument filed as an exhibit to the Company's Form 10-K/A for the year ended December 31, 2002 and which are not the subject of the opinions to be delivered pursuant to Sections 6(a) or 6(c) hereof; and

(ii) To such counsel's knowledge, the Company is not in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument filed as an exhibit to the Company's Form 10-K/A for the year ended December 31, 2002 to which it is a party or by which it or any of its properties may be bound.

(c) The Company shall have requested and caused Willkie, Farr & Gallagher LLP, counsel to the Company, to have furnished to the Representative their opinion, dated the Closing Date and addressed to the Representative, to the effect that:

(i) The issue and sale of the Securities being delivered at the Closing Date by the Company, and the performance by the Company of its obligations under this Agreement, the Indenture and the Registration Rights Agreement, will not result in a breach or violation of any of the terms or provisions of or constitute a default under the Indenture, dated as of December 1, 1999, between the Company and State Street Bank and Trust Company of California, N.A., as trustee (the "Prior Trustee"), as amended by the First Supplemental Indenture thereto dated as of December 28, 2002;

(ii) Other than with respect to the conversion terms thereof, the Securities conform in all material respects to the description of the Securities contained in the Final Memorandum;

(iii) The Indenture constitutes a legal, valid and binding instrument enforceable against the Company in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity); the Securities, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Initial Purchasers under this Agreement,

will constitute legal, valid, binding and enforceable obligations of the Company entitled to the benefits of the Indenture (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity) and will be convertible into Common Stock in accordance with their terms and the terms of the Indenture;

(iv) Other than with respect to the conversion terms of the Securities, the statements set forth in the Final Memorandum under the caption "Description of the Debentures", insofar as they purport to constitute a summary of the terms of the Securities, fairly present such information;

(v) The issue and sale of the Securities being delivered at the Closing Date by the Company, and the performance by the Company of its obligations under the Indenture, will not result in any violation of any statute of the State of New York or any order, rule or regulation known to such counsel of any court or governmental agency or body of such State having jurisdiction over the Company or any of the properties of the Company (except that no opinion is expressed with respect to securities or Blue Sky laws or regulations); and

(vi) No consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or for the performance by the Company of its obligations under this Agreement, the Indenture or the Registration Rights Agreement, except such consents, approvals, authorizations, registrations or qualifications as may be required under the securities or Blue Sky laws or regulations of the State of New York in connection with the purchase and distribution of the Securities by the Initial Purchasers.

(d) The Representative shall have received from Cahill Gordon & Reindel LLP, counsel for the Initial Purchasers, such opinion or opinions, dated the Closing Date and addressed to the Representative, with respect to the issuance and sale of the Securities, the Indenture, the Registration Rights Agreement, the Final Memorandum (as amended or supplemented at the Closing Date) and other related matters as the Representative may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(e) The Company shall have furnished to the Representative a certificate of the Company, signed by (x) the Chairman of the Board or the Chief Executive Officer and (y) the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Final Memorandum, any amendment or supplement to the Final Memorandum and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if

made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) since the date of the most recent financial statements included or incorporated by reference in the Final Memorandum (exclusive of any amendment or supplement thereto), there has been no Material Adverse Effect.

(f) At the Execution Time and also on the Closing Date, PricewaterhouseCoopers LLP shall have furnished to the Initial Purchasers letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you, containing statements and information of the type customarily included in accountants' "comfort letters" with respect to the financial statements and certain financial information contained in the Final Memorandum (including any amendment or supplement thereto at the date of the applicable letter).

(g) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Final Memorandum (exclusive of any amendment or supplement thereto), there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraph (f) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), prospects, earnings, business or properties of the Company, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Memorandum (exclusive of any amendment or supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representative, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated in the Final Memorandum (exclusive of any amendment or supplement thereto).

(h) The Securities shall have been designated as PORTAL-eligible securities in accordance with the rules and regulations of the NASD and the Securities shall be eligible for clearance and settlement through The Depository Trust Company.

(i) At the Execution Time, the Company shall have furnished to the Representative a letter substantially in the form of Exhibit A hereto (or such other form that has been previously approved by the Representative) from each officer and director of the Company and the stockholders listed on Exhibit B addressed to the Representative.

(j) The Company shall have caused the shares of Common Stock initially issuable upon conversion of the Securities to be approved for listing, subject to issuance, on the Nasdaq National Market.

(k) Prior to the Closing Date, the Company shall have furnished to the Representative such further information, certificates and documents as the Representative may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representative and counsel for the Initial Purchasers, this Agreement and all obligations of the Initial Purchasers hereunder may be cancelled at, or at any time prior to, the Closing Date by the Representative. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 will be delivered at the office of Cahill Gordon & Reindel LLP, 80 Pine Street, New York, New York 10005 on the Closing Date.

SECTION 7. Reimbursement of Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Initial Purchasers set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Initial Purchasers, the Company will reimburse the Initial Purchasers severally through Citigroup Global Markets Inc. on demand for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

SECTION 8. Indemnification and Contribution. (a) The Company agrees to indemnify and hold harmless each Initial Purchaser, the directors, officers, employees, Affiliates and agents of each Initial Purchaser and each person who controls any Initial Purchaser within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other U.S. federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum, the Final Memorandum or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Memorandum, the Final Memorandum, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Initial Purchaser through the Representative specifically for inclusion therein. This indemnity agreement will be in addition to any liability that the Company may otherwise have.

(b) Each Initial Purchaser severally, and not jointly, agrees to indemnify and hold harmless the Company, each of its directors, each of its officers, and each person who

controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Initial Purchaser, but only with reference to written information relating to such Initial Purchaser furnished to the Company by or on behalf of such Initial Purchaser through the Representative specifically for inclusion in the Preliminary Memorandum, the Final Memorandum or in any amendment or supplement thereto. This indemnity agreement will be in addition to any liability that any Initial Purchaser may otherwise have. The Company acknowledges that (i) the statements set forth in the last paragraph of the cover page regarding delivery of the Securities and (ii), under the heading "Plan of Distribution", (A) the 1st sentence of the 3rd paragraph relating to resales by the Initial Purchasers, (B) the 4th sentence of the 9th paragraph relating to market making activities and (C) the 10th paragraph relating to stabilization, syndicate covering transactions and penalty bids in the Preliminary Memorandum and the Final Memorandum constitute the only information furnished in writing by or on behalf of the Initial Purchasers for inclusion in the Preliminary Memorandum, the Final Memorandum or in any amendment or supplement thereto.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such

claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Initial Purchasers severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, damage, liability or action) (collectively "Losses") to which the Company and one or more of the Initial Purchasers may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Initial Purchasers on the other from the offering of the Securities; provided, however, that in no case shall any Initial Purchaser be responsible for any amount in excess of the purchase discount or commission applicable to the Securities purchased by such Initial Purchaser hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Initial Purchasers severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Initial Purchasers on the other in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions. Relative fault shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company on the one hand or the Initial Purchasers on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Initial Purchasers agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Initial Purchaser within the meaning of either the Act or the Exchange Act and each director, officer, employee, Affiliate and agent of an Initial Purchaser shall have the same rights to contribution as such Initial Purchaser, and each person who controls the Company within the meaning of either the Act or the Exchange Act and each officer and director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

SECTION 9. Default by an Initial Purchaser. If any one or more Initial Purchasers shall fail to purchase and pay for any of the Securities agreed to be purchased by such Initial Purchaser hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Initial Purchasers shall be obligated severally to take up and pay for (in the respective proportions which the principal amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate principal amount of Securities set forth opposite the names of all the remaining Initial Purchasers) the Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase;

provided, however, that in the event that the aggregate principal amount of Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase shall exceed 10% of the aggregate principal amount of Securities set forth in Schedule I hereto, the remaining Initial Purchasers shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Initial Purchasers do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Initial Purchaser or the Company. In the event of a default by any Initial Purchaser as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representative shall determine in order that the required changes in the Final Memorandum or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Initial Purchaser of its liability, if any, to the Company or any nondefaulting Initial Purchaser for damages occasioned by its default hereunder.

SECTION 10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representative, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the Nasdaq National Market or trading in securities generally on the Nasdaq National Market shall have been suspended or limited or minimum prices shall have been established on the Nasdaq National Market; (ii) a banking moratorium shall have been declared either by U.S. federal or New York State authorities; or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representative, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated in the Final Memorandum (exclusive of any amendment or supplement thereto).

SECTION 11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Initial Purchasers or the Company or any of the indemnified persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

SECTION 12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representative, will be mailed, delivered or telefaxed to the Citigroup Global Markets Inc. General Counsel (fax no.: (212) 816-7912) and confirmed to the General Counsel, Citigroup Global Markets Inc., at 388 Greenwich Street, New York, New York 10013, Attention: General Counsel; or, if sent to the Company, will be mailed, delivered or telefaxed to Equinix, Inc. General Counsel (fax no.: (650) 513-7909) and confirmed to it at 301 Velocity Way, Foster City, California 94404, Attention: General Counsel.

SECTION 13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the indemnified persons referred to in Section 8 hereof and their respective successors, and, except as expressly set forth in Section 5(h) hereof, no other person will have any right or obligation hereunder.

SECTION 14. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. The parties hereto each hereby waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

SECTION 15. Waiver of Tax Confidentiality. Notwithstanding anything herein to the contrary, purchasers of the Securities (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of any transaction contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to the purchasers of the Securities relating to such U.S. tax treatment and U.S. tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

SECTION 16. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SECTION 17. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

SECTION 18. Definitions. The terms that follow, when used in this Agreement, shall have the meanings indicated.

“Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Affiliate” shall have the meaning specified in Rule 501(b) of Regulation D.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in The City of New York.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commission” shall mean the Securities and Exchange Commission.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

“Execution Time” shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

“Investment Company Act” shall mean the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission promulgated thereunder.

“NASD” shall mean the National Association of Securities Dealers, Inc.

“PORTAL” shall mean the Private Offerings, Resales and Trading through Automated Linkages system of the NASD.

“Regulation D” shall mean Regulation D under the Act.

“Regulation S” shall mean Regulation S under the Act.

“Trust Indenture Act” shall mean the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission promulgated thereunder.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Initial Purchasers.

Very truly yours,

EQUINIX, INC.

By: /s/ RENEE F. LANAM

Name: Renée F. Lanam
Title: Chief Financial Officer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

By: Citigroup Global Markets Inc. for itself and the other several Initial Purchasers, if any, named in Schedule I to the foregoing Agreement.

CITIGROUP GLOBAL MARKETS INC.

By: /s/ JONATHAN F. MAUCK

Name: Jonathan F. Mauck
Title: Vice President

SCHEDULE I

Initial Purchasers

**Principal Amount
of Firm Securities
to be Purchased**

Citigroup Global Markets Inc	\$ 67,500,000
SG Cowen Securities Corporation	\$ 7,500,000
Total	\$ 75,000,000

SIGNIFICANT SUBSIDIARIES

EQUINIX OPERATING CO, INC.

EQUINIX EUROPE, INC.

EQUINIX CAYMAN ISLANDS HOLDINGS

EQUINIX DUTCH HOLDINGS N.V.

EQUINIX NETHERLANDS B.V.

[Letterhead of officer, director or major stockholder of Equinix Inc.]

Equinix Inc.

Offering of Convertible Subordinated Debentures due 2024

February [], 2004

Citigroup Global Markets Inc.
as Representative of
the several Initial Purchasers,

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

This letter is being delivered to you in connection with the proposed Purchase Agreement (the "Purchase Agreement"), between Equinix, Inc., a Delaware corporation (the "Company"), and you as representative of a group of Initial Purchasers named therein, relating to an offering of Convertible Subordinated Debentures due 2024 (the "Offering"), which will be convertible into common stock, \$0.001 par value (the "Common Stock"), of the Company.

In order to induce you and other Initial Purchasers to enter into the Purchase Agreement, the undersigned will not, without the prior written consent of Citigroup Global Markets Inc., offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible into, or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 90 days after the date of the Purchase Agreement, other than shares of Common Stock disposed of as bona fide gifts approved by Citigroup Global Markets Inc.

If for any reason the Purchase Agreement shall be terminated prior to the Closing Date (as defined in the Purchase Agreement), the agreement set forth above shall likewise be terminated.

Yours very truly,

[Signature]

Name:

Title:

Stockholders Subject to Agreement Described in Section 6(i)

Cisco Systems Investments Ltd.
Benchmark Capital Partners II, L.P.
Benchmark Capital Partners IV, L.P.
Crosslink Ventures IV, L.P.
Crosslink Omega Ventures I GmbH & Co. KG
Offshore Crosslink Omega Ventures IV
Omega Bayview IV
Crosslink Crossover Fund III
Offshore Crosslink Crossover Fund III

Permitted Issuances

Notwithstanding the terms of Section 5(m) hereof, the Company may:

- (a) negotiate or enter into business transactions which result in the offer or sale of shares of the Company's capital stock so long as no such capital stock is issued and sold and no such transaction is publicly announced during such 90 day period without the prior written consent of Citigroup Global Markets Inc.; and
- (b) issue and sell warrants to purchase up to 100,000 shares of Common Stock to the Company's existing real estate lessors in Asia.

EQUINIX, INC.

as Issuer

and

U.S. BANK NATIONAL ASSOCIATION

as Trustee

INDENTURE

Dated as of February 11, 2004

\$75,000,000

2.50% CONVERTIBLE SUBORDINATED DEBENTURES DUE 2024

CROSS-REFERENCE TABLE

<u>TIA Section</u>	<u>Indenture Section</u>
310(a)(1)	5.11
(a)(2)	5.11
(a)(3)	n/a
(a)(4)	n/a
(a)(5)	5.11
(b)	5.3; 5.11
(c)	n/a
311(a)	5.12
(b)	5.12
(c)	n/a
312(a)	2.10
(b)	14.3
(c)	14.3
313(a)	5.7
(b)(1)	n/a
(b)(2)	5.7
(c)	5.7; 14.2
(d)	5.7
314(a)(1),(2),(3)	9.6; 14.6
(a)(4)	9.6; 9.7; 14.6
(b)	n/a
(c)(1)	14.5
(c)(2)	14.5
(c)(3)	n/a
(d)	n/a
(e)	14.6
(f)	n/a
315(a)	5.1(a)
(b)	5.6; 14.2
(c)	5.1(b)
(d)	5.1(c)
(e)	4.14
316(a)(last sentence)	2.13
(a)(1)(A)	4.5
(a)(1)(B)	4.4
(a)(2)	n/a
(b)	4.7
(c)	7.4
317(a)(1)	4.8
(a)(2)	4.9
(b)	2.5
318(a)	14.1
(b)	n/a
(c)	14.1

“n/a” means not applicable.

This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture.

TABLE OF CONTENTS

	Page
ARTICLE 1	
DEFINITIONS AND INCORPORATION BY REFERENCE	
SECTION 1.1.	Definitions 1
SECTION 1.2.	Incorporation by Reference of Trust Indenture Act 9
SECTION 1.3.	Rules of Construction 10
ARTICLE 2	
THE SECURITIES	
SECTION 2.1.	Title and Terms 10
SECTION 2.2.	Form of Securities 11
SECTION 2.3.	Legends 12
SECTION 2.4.	Execution, Authentication, Delivery and Dating 14
SECTION 2.5.	Registrar and Paying Agent 15
SECTION 2.6.	Paying Agent to Hold Assets in Trust 15
SECTION 2.7.	General Provisions Relating to Transfer and Exchange 15
SECTION 2.8.	Book-Entry Provisions for the Global Securities 16
SECTION 2.9.	Special Transfer Provisions 17
SECTION 2.10.	Holder Lists 19
SECTION 2.11.	Persons Deemed Owners 19
SECTION 2.12.	Mutilated, Destroyed, Lost or Stolen Securities 19
SECTION 2.13.	Treasury Securities 20
SECTION 2.14.	Temporary Securities 20
SECTION 2.15.	Cancellation 20
SECTION 2.16.	CUSIP Numbers 20
SECTION 2.17.	Defaulted Interest 20
ARTICLE 3	
SATISFACTION AND DISCHARGE	
SECTION 3.1.	Satisfaction and Discharge of Indenture 21
SECTION 3.2.	Deposited Monies To Be Held in Trust 21
SECTION 3.3.	Return of Unclaimed Monies 21
ARTICLE 4	
DEFAULTS AND REMEDIES	
SECTION 4.1.	Events of Default 22
SECTION 4.2.	Acceleration of Maturity; Rescission and Annulment 23
SECTION 4.3.	Other Remedies 23
SECTION 4.4.	Waiver of Past Defaults 23
SECTION 4.5.	Control by Majority 24
SECTION 4.6.	Limitation on Suit 24
SECTION 4.7.	Unconditional Rights of Holders to Receive Payment and to Convert 25
SECTION 4.8.	Collection of Indebtedness and Suits for Enforcement by the Trustee 25
SECTION 4.9.	Trustee May File Proofs of Claim 25

	Page	
SECTION 4.10.	Restoration of Rights and Remedies	26
SECTION 4.11.	Rights and Remedies Cumulative	26
SECTION 4.12.	Delay or Omission Not Waiver	26
SECTION 4.13.	Application of Money Collected	26
SECTION 4.14.	Undertaking for Costs	26
SECTION 4.15.	Waiver of Stay or Extension Laws	27

ARTICLE 5

THE TRUSTEE

SECTION 5.1.	Certain Duties and Responsibilities	27
SECTION 5.2.	Certain Rights of Trustee	28
SECTION 5.3.	Individual Rights of Trustee	29
SECTION 5.4.	Money Held in Trust	29
SECTION 5.5.	Trustee's Disclaimer	29
SECTION 5.6.	Notice of Defaults	29
SECTION 5.7.	Reports by Trustee to Holders	29
SECTION 5.8.	Compensation and Indemnification	29
SECTION 5.9.	Replacement of Trustee	30
SECTION 5.10.	Successor Trustee by Merger, Etc.	30
SECTION 5.11.	Corporate Trustee Required; Eligibility	30
SECTION 5.12.	Collection of Claims Against the Company	31

ARTICLE 6

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 6.1.	Company May Consolidate, Etc., Only on Certain Terms	31
SECTION 6.2.	Successor Substituted	31

ARTICLE 7

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 7.1.	Without Consent of Holders of Securities	31
SECTION 7.2.	With Consent of Holders of Securities	32
SECTION 7.3.	Compliance with Trust Indenture Act	33
SECTION 7.4.	Revocation of Consents and Effect of Consents or Votes	33
SECTION 7.5.	Notation on or Exchange of Securities	33
SECTION 7.6.	Trustee to Sign Amendment, Etc.	34

ARTICLE 8

MEETING OF HOLDERS OF SECURITIES

SECTION 8.1.	Purposes for Which Meetings May Be Called	34
SECTION 8.2.	Call Notice and Place of Meetings	34
SECTION 8.3.	Persons Entitled to Vote at Meetings	34
SECTION 8.4.	Quorum; Action	34
SECTION 8.5.	Determination of Voting Rights; Conduct and Adjournment of Meetings	35
SECTION 8.6.	Counting Votes and Recording Action of Meetings	35

ARTICLE 9

COVENANTS

SECTION 9.1.	Payment of Principal and Interest	36
SECTION 9.2.	Maintenance of Offices or Agencies	36
SECTION 9.3.	Corporate Existence	36
SECTION 9.4.	Maintenance of Properties	36
SECTION 9.5.	Payment of Taxes and Other Claims	36
SECTION 9.6.	Reports	37
SECTION 9.7.	Compliance Certificate	37
SECTION 9.8.	Resale of Certain Securities	37
SECTION 9.9.	Liquidated Damages	37

ARTICLE 10

REDEMPTION OF SECURITIES

SECTION 10.1.	Optional Redemption	38
SECTION 10.2.	Notice to Trustee	38
SECTION 10.3.	Selection of Securities to Be Redeemed	38
SECTION 10.4.	Notice of Redemption	38
SECTION 10.5.	Effect of Notice of Redemption	39
SECTION 10.6.	Deposit of Redemption Price	39
SECTION 10.7.	Securities Redeemed in Part	39

ARTICLE 11

PURCHASE OF SECURITIES

SECTION 11.1.	Purchase Right Upon Fundamental Change	39
SECTION 11.2.	Purchase of Securities by the Company at Option of the Holder	40
SECTION 11.3.	Notices; Method of Exercising Purchase Right, Etc.	41

ARTICLE 12

CONVERSION OF SECURITIES

SECTION 12.1.	Conversion Right and Conversion Price	43
SECTION 12.2.	Exercise of Conversion Right	43
SECTION 12.3.	Fractions of Shares	44
SECTION 12.4.	Adjustment of Conversion Price	44
SECTION 12.5.	Notice of Adjustments of Conversion Price	51
SECTION 12.6.	Notice Prior to Certain Actions	51
SECTION 12.7.	Company to Reserve Common Stock	52
SECTION 12.8.	Taxes on Conversions	52
SECTION 12.9.	Covenant as to Common Stock	52
SECTION 12.10.	Cancellation of Converted Securities	52
SECTION 12.11.	Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale	52
SECTION 12.12.	Responsibility of Trustee for Conversion Provisions	53

ARTICLE 13

SUBORDINATION

SECTION 13.1.	Securities Subordinated to Senior Debt	53
SECTION 13.2.	Subrogation	55
SECTION 13.3.	Obligation of the Company Is Absolute and Unconditional	55
SECTION 13.4.	Maturity of or Default on Senior Debt	55
SECTION 13.5.	Payments on Securities Permitted	56
SECTION 13.6.	Effectuation of Subordination by Trustee	56
SECTION 13.7.	Knowledge of Trustee	56
SECTION 13.8.	Trustee's Relation to Senior Debt	56
SECTION 13.9.	Rights of Holders of Senior Debt Not Impaired	57
SECTION 13.10.	Modification of Terms of Senior Debt	57
SECTION 13.11.	Certain Conversions Not Deemed Payment	57

ARTICLE 14

OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 14.1.	Trust Indenture Act Controls	57
SECTION 14.2.	Notices	57
SECTION 14.3.	Communication by Holders with Other Holders	58
SECTION 14.4.	Acts of Holders of Securities	58
SECTION 14.5.	Certificate and Opinion as to Conditions Precedent	59
SECTION 14.6.	Statements Required in Certificate or Opinion	59
SECTION 14.7.	Effect of Headings and Table of Contents	60
SECTION 14.8.	Successors and Assigns	60
SECTION 14.9.	Separability Clause	60
SECTION 14.10.	Benefits of Indenture	60
SECTION 14.11.	Governing Law	60
SECTION 14.12.	Counterparts	60
SECTION 14.13.	Legal Holidays	60
SECTION 14.14.	Recourse Against Others	60

INDENTURE, dated as of February 11, 2004, between EQUINIX, INC., a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at 301 Velocity Way, 5th Floor, Foster City, California 94404 (the “Issuer” or the “Company”), and U.S. BANK NATIONAL ASSOCIATION, as Trustee (the “Trustee”), having its principal corporate trust office at 633 West Fifth Street, 24th Floor, LM-CA-T24T, Los Angeles, California 90071.

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 2.50% Convertible Subordinated Debentures due 2024 (herein called the “Securities”) of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1. Definitions. For all purposes of this Indenture and the Securities, the following terms are defined as follows:

“Act”, when used with respect to any Holder of a Security, has the meaning specified in Section 14.4(a) hereof.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

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

“Board of Directors” means either the board of directors of the Company or any committee of that board empowered to act for it with respect to this Indenture.

“Board Resolution” means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to be in full force and effect on the date of such certification, shall have been delivered to the Trustee.

“Business Day”, when used with respect to any Place of Payment or Place of Conversion, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment or Place of Conversion, as the case may be, are authorized or obligated by law to close.

“Chief Executive Officer” means the chief executive officer of the Company.

“Closing Price” of any security on any date of determination means:

- (1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security (regular way) on the New York Stock Exchange on such date;
- (2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;
- (3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the Nasdaq National Market;
- (4) if such security is not so reported, the last quoted bid price for such security in the over-the-counter market as reported by the National Quotation Bureau or similar organization; or
- (5) if such bid price is not available, the average of the mid-point of the last bid and ask prices of such security on such date from at least three nationally recognized independent investment banking firms retained for this purpose by the Company.

“Common Stock” means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. However, subject to the provisions of Section 12.11 hereof, shares issuable on conversion of Securities shall include only shares of the class designated as Common Stock, par value \$0.001 per share, of the Company at the Issue Date or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company, *provided, however*, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Company” means the corporation named as the “Company” in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor corporation.

“Company Notice” has the meaning specified in Section 11.3 hereof.

“Company Order” means a written order signed in the name of the Company by both (1) the Chief Executive Officer, the President or a Vice President and (2) so long as not the same as the officer signing pursuant to clause (1), the Chief Financial Officer, the Treasurer, the Secretary or any Assistant Secretary of the Company, and delivered to the Trustee.

“Conversion Agent” means any Person authorized by the Company to convert Securities in accordance with Article 12 hereof.

“Conversion Price” has the meaning specified in Section 12.1 hereof.

“Corporate Trust Office” means for purposes of presentation or surrender of Securities for payment, registration, transfer, exchange or conversion or for service of notices or demands upon the Company, the office of U.S. Bank Trust National Association, an Affiliate of the Trustee, located in the City of New York (which at the Issue Date is located at 100 Wall Street, Suite 1600, EX-NY-WALL, New York, New York 10005, and for all other purposes, the office of the Trustee located in the City of Los Angeles, California (which at the Issue Date is located at 633 West Fifth Street, 24th Floor, LM-CA-T24T, Los Angeles, California 90071).

“Corporation” means corporations, associations, limited liability companies, companies and business trusts.

“Current Market Price” has the meaning set forth in Section 12.4(g).

“Custodian” means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

“Default” means an event which is, or after notice or lapse of time or both would be, an Event of Default.

“Defaulted Interest” has the meaning specified in Section 2.17 hereof.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Designated Senior Debt” means Senior Debt of the Company which, on the date of a payment event of default or the delivery of a Payment Blockage Notice, has an aggregate amount outstanding of, or under which, on such date, the holders thereof are committed to lend up to, at least \$5.0 million and is specifically designated in the instrument, agreement or other document evidencing or governing that Senior Debt as “Designated Senior Debt” for purposes of this Indenture (*provided, however*, that such instrument, agreement or other document may place limitations and conditions on the right of such Senior Debt to exercise the rights of Designated Senior Debt).

“Dollar”, “U.S. Dollar” or “U.S. \$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

“DTC Participants” has the meaning specified in Section 2.8 hereof.

“Event of Default” has the meaning specified in Section 4.1 hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Expiration Time” has the meaning specified in Section 12.4(f) hereof.

“fair market value” has the meaning set forth in Section 12.4(g) hereof.

“Fundamental Change” means the occurrence of any of the following after the Issue Date:

(1) the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in elections of directors, other than any such acquisition by the Company, any subsidiary of the Company or any employee benefit plan of the Company; *provided, however*, that the conversion of notes or exercise of warrants outstanding on the Issue Date by the holders thereof, shall not be deemed a Fundamental Change; and *provided further*, that shares issuable upon conversion of payment-in-kind notes issued to any holder of such notes as payment of interest on such notes shall not be deemed a Fundamental Change;

(2) (a) the direct or indirect sale or transfer of all or substantially all of the Company’s assets; (b) any business combination which results in the Holders of the Company’s capital stock, calculated on an as-converted basis, prior to such business combination beneficially owning less than 50% of the voting securities of the resulting parent entity in such business combination; or (c) a change in the composition of the Board of Directors, as a result of which fewer than 50% of the incumbent directors are directors who either (i) had been members of the Board of Directors on the corresponding calendar day of the second preceding year (the “Original Directors”); or (ii) were nominated for election or appointed to the Board of

Directors by a majority of the aggregate of the Original Directors and other directors nominated or appointed in a manner consistent with this clause (ii);

(3) the Common Stock of the Company (or other common stock into which the debentures are then convertible) is neither listed for trading on a U.S. national securities exchange nor approved for trading on the Nasdaq National Market; or

(4) the Company is liquidated or dissolved or a resolution is passed by the Company's stockholders approving a plan of liquidation or dissolution of the Company other than in a transaction which complies with the provisions described in Article 6 of this Indenture.

However, a Fundamental Change will not be deemed to have occurred if:

(x) the daily market price per share of Common Stock for any five Trading Days within the period of 10 consecutive Trading Days beginning immediately after the later of the Fundamental Change or the public announcement of the Fundamental Change (in the case of a clause (1) or (2)(c) above) or the period of 10 consecutive Trading Days ending immediately before the Fundamental Change (in the case of clause (2)(a) and (2)(b) above) shall equal or exceed 110% of the conversion price of the debentures in effect on the date of the Fundamental Change or the public announcement of the Fundamental Change, as applicable; or

(y) in the case of the clause (2) above, at least 95% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Fundamental Change consists of shares of common stock that are, or upon issuance will be, traded on the New York Stock Exchange or quoted on the Nasdaq National Market.

Beneficial ownership shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term "person" shall include any syndicate or group which would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

"Global Security" has the meaning specified in Section 2.2 hereof.

"Guarantee" means any obligation, contingent or otherwise, of any Person, directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term "guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "guarantee" used as a verb has a corresponding meaning.

"Holder", when used with respect to any Security, means the Person in whose name the Security is registered in the Register.

"Indebtedness", when used with respect to any Person, and without duplication means:

(1) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, Interest Rate Protection Agreements, and any loans or advances

from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or other instruments for the payment of money, or incurred in connection with the acquisition of any property, services or assets (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof), other than any account payable or other accrued current liability or obligation to trade creditors incurred in the ordinary course of business in connection with the obtaining of materials or services;

(2) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers' acceptances, surety bonds, performance bonds or other guaranty of contractual performance;

(3) all obligations and liabilities (contingent or otherwise) in respect of (a) leases of such Person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person and (b) any lease or related documents (including a purchase agreement) in connection with the lease of real property which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the landlord and the obligations of such Person under such lease or related document to purchase or to cause a third party to purchase the leased property;

(4) all obligations of such Person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement;

(5) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (1) through (4);

(6) any indebtedness or other obligations described in clauses (1) through (4) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and

(7) any and all deferrals, renewals, extensions, refinancings, replacements, restatements and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (1) through (6).

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Initial Purchasers" means Citigroup Global Markets Inc. and SG Cowen Securities Corporation.

"Interest Payment Date" means each February 15 and August 15.

"Interest Rate" means 2.50% per annum.

"Interest Rate Protection Agreement" means, with respect to any Person, any interest rate swap agreement, interest rate cap or collar agreement or other financial agreement or arrangement designed to protect such Person against fluctuations in interest rates, as in effect from time to time.

"Issue Date" means February 11, 2004.

"Liquidated Damages" means all liquidated damages, if any, payable pursuant to Section 3 of the Registration Rights Agreement.

“Maturity” means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by acceleration, conversion, call for redemption, exercise of a Purchase Right or a Put Purchase Right or otherwise.

“Nasdaq National Market” means the National Association of Securities Dealers Automated Quotation National Market or any successor national securities exchange or automated over-the-counter trading market in the United States.

“Non-Electing Share” has the meaning specified in Section 12.11 hereof.

“Officer” of the Company means the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, any Vice President, the Secretary or any Assistant Secretary of the Company.

“Officers’ Certificate” means a certificate signed by both (1) the Chief Executive Officer, the President or a Vice President and (2) so long as not the same as the officer signing pursuant to clause (1), the Chief Financial Officer, the Treasurer or the Secretary of the Company, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel to the Company (and may include directors or employees of the Company) and which opinion is acceptable to the Trustee, which acceptance shall not be unreasonably withheld.

“Optional Redemption Price” has the meaning specified in Section 10.1 hereof.

“Outstanding”, when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except Securities:

(1) previously canceled by the Trustee or delivered to the Trustee for cancellation;

(2) for the payment or redemption of which money in the necessary amount has been previously deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities, *provided, however,* that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture; and

(3) which have been paid, in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company.

“Paying Agent” has the meaning specified in Section 2.5 hereof.

“Payment Blockage Notice” has the meaning specified in Section 13.1(d) hereof.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

“Physical Securities” has the meaning specified in Section 2.2 hereof.

“Place of Conversion” means any city in which any Conversion Agent is located.

“Place of Payment” means any city in which any Paying Agent is located.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any

Security authenticated and delivered under Section 2.12 hereof in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“Purchase Agreement” means the Purchase Agreement, dated February 5, 2004, among the Company and the Initial Purchasers.

“Purchase Date” has the meaning specified in Section 11.1 hereof.

“Purchase Notice” has the meaning specified in Section 11.2 hereof.

“Purchase Price” has the meaning specified in Section 11.1 hereof.

“Purchase Right” has the meaning specified in Section 11.1 hereof.

“Put Purchase Date” has the meaning specified in Section 11.2 hereof.

“Put Purchase Price” has the meaning specified in Section 11.2 hereof.

“Put Purchase Right” has the meaning specified in Section 11.2 hereof.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Quoted Price” of the Common Stock means the last reported sale price of the Common Stock on the Nasdaq National Market or, if the Common Stock is listed on a national securities exchange, then on such exchange, or if the Common Stock is not quoted on Nasdaq National Market or listed on an exchange, the average of the last bid and asked price on the National Association of Securities Dealers Automated Quotation System.

“Record Date” means either a Regular Record Date or a Special Record Date, as the case may be, *provided* that, for purposes of Section 12.4 hereof, Record Date has the meaning specified in Section 12.4(g) hereof.

“Redemption Date”, when used with respect to any Security to be redeemed, means the optional redemption date, in the event of an optional redemption.

“Redemption Price”, when used with respect to any Security to be redeemed, means the Optional Redemption Price, in the event of an optional redemption.

“Reference Period” has the meaning set forth in Section 12.4(d) hereof.

“Register” has the meaning specified in Section 2.5 hereof.

“Registrar” has the meaning specified in Section 2.5 hereof.

“Registration Rights Agreement” means the Registration Rights Agreement, dated as of February 11, 2004, among the Company and the Initial Purchasers.

“Regular Record Date” for the interest on the Securities (including Liquidated Damages, if any) payable means the February 1 (whether or not a Business Day) next preceding a February 15 Interest Payment Date and the August 1 (whether or not a Business Day) next preceding an August 15 Interest Payment Date.

“Regulation S” means Regulation S promulgated under the Securities Act.

“Responsible Officer”, when used with respect to the Trustee, means any officer in the Corporate Trust Office of the Trustee and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Restricted Period” means the applicable distribution compliance period under Regulation S.

“Restricted Securities” means the Securities defined as such in Section 2.3 hereof.

“Restricted Securities Legend” has the meaning set forth in Section 2.3(a) hereof.

“Rule 144” means Rule 144 under the Securities Act (including any successor rule thereof), as the same may be amended from time to time.

“Rule 144A” means Rule 144A as promulgated under the Securities Act (including any successor rule thereof), as the same may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

“Securities” has the meaning ascribed to it in the first paragraph under the caption “Recitals of the Company”.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Debt” means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) and rent payable on or termination payment with respect to or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company (including convertible notes issued to a subsidiary of STT Communications Ltd. and entities affiliated with Crosslink Capital, Inc. in connection with financing transactions in December 2002 and June 2003), whether outstanding on the Issue Date or subsequently created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), except for (a) any particular Indebtedness in respect of which the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to the Securities or expressly provides that such Indebtedness is pari passu or junior to the Securities; (b) any Indebtedness between or among the Company and/or any of its Subsidiaries, or any of the Company’s Affiliates other than (i) Indebtedness held by an Affiliate on the Issue Date, (ii) Indebtedness acquired after the Issue Date by operation of the pay-in-kind terms of any Indebtedness held by an Affiliate on the Issue Date as such pay-in-kind terms are in effect on the Issue Date, (iii) Indebtedness acquired by an Affiliate pursuant to preemptive rights held by such Affiliate on the Issue Date, and (iv) unless the amount under (iii) above is greater, up to 25% of the aggregate principal amount of any future series of Indebtedness issued after the Issue Date acquired directly from the Company in connection with a bona fide offering of such series of Indebtedness directed principally to unaffiliated third parties; (c) the Company’s real property leases; (d) any liability for federal, state, local or other taxes owed or owing by the Company; and (e) the Company’s trade payables and accrued expenses (including, without limitation, accrued compensation) for goods, services or materials purchased or provided in the ordinary course of business. The term “Senior Debt” shall include, without limitation, all Designated Senior Debt.

“Significant Subsidiary” means any Subsidiary which is a “significant subsidiary” within the meaning of Rule 405 under the Securities Act.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.17 hereof.

“Stated Maturity” means the date specified in any Security as the fixed date for the payment of principal on such Security or on which an installment of interest (including Liquidated Damages, if any) on such Security is due and payable.

“Subsidiary” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition only, “voting stock” means stock which ordinarily has voting power

for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbbb), as in effect on the Issue Date; *provided, however*, that in the event the TIA is amended after such date, “TIA” means, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended, or any successor statute.

“Trading Day” means a day during which trading in securities generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a national or regional securities exchange, on the Nasdaq National Market or, if the Common Stock is not then quoted on the Nasdaq National Market, on the principal other market on which the Common Stock is traded.

“Trading Price” of the Securities on any date of determination means the average of the secondary market bid quotations per \$1,000 principal amount of Securities obtained by the Trustee for \$2,000,000 principal amount of the Securities at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company; *provided, however*, that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, this one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for \$2,000,000 principal amount of Securities from a nationally recognized securities dealer, then the trading price per \$1,000 principal amount of Securities shall be deemed to be less than 98% of the product of the sale price of the Common Stock and the then applicable conversion rate.

“Transfer Agent” means any Person, which may be the Company, authorized by the Company to exchange or register the transfer of Securities.

“Trigger Event” has the meaning specified in Section 12.4(d) hereof.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean such successor Trustee.

“U.S. Person” has the meaning specified in Regulation S.

“Vice President”, when used with respect to the Company, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

SECTION 1.2. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

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

- (i) “indenture securities” means the Securities;
- (ii) “indenture security holder” means a Holder;
- (iii) “indenture to be qualified” means this Indenture;
- (iv) “indenture trustee” or “institutional trustee” means the Trustee; and
- (v) “obligor” on the Securities means the Company and any other obligor on the indenture securities.

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

SECTION 1.3. Rules of Construction. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with accounting principles generally accepted in the United States prevailing at the time of any relevant computation hereunder; and
- (3) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2

THE SECURITIES

SECTION 2.1. Title and Terms. The Securities shall be known and designated as the "2.50% Convertible Subordinated Debentures due 2024" of the Company. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is limited to \$75,000,000 (or \$86,250,000 if the option set forth in Section 2(b) of the Purchase Agreement is exercised in full), except for securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of other Securities pursuant to Section 2.7, 2.8, 2.9, 2.12, 7.5, 10.7, 11.1 or 12.2 hereof. The Securities shall be issuable in denominations of \$1,000 or integral multiples thereof.

The Securities shall mature on February 15, 2024.

Interest shall accrue from February 11, 2004 at the Interest Rate until the principal thereof is paid or made available for payment. Interest shall be payable semiannually in arrears on February 15 and August 15 of each year, commencing August 15, 2004.

Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full semiannual period for which interest is calculated, on the basis of a 30-day month, and for such periods of less than a month, the actual number of days elapsed over a 30-day month.

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest (including Liquidated Damages, if any) on such Security on the corresponding Interest Payment Date.

A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be entitled to receive interest (including Liquidated Damages, if any) on the principal amount of such Security on such Interest Payment Date, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during the period between the close of business on such Regular Record Date and ending with the opening of business on the corresponding Interest Payment Date shall be required to pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted (but excluding any overdue interest on the principal amount of such Security so converted that exists at the time such Holder surrenders such Security for conversion), which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security (a) which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.4 hereof on a Redemption Date after such Regular Record Date and on or prior to the next succeeding Interest Payment Date or (b) with respect to which the Company has specified a Purchase Date that is after such Regular Record Date and on or prior to the next succeeding Interest Payment Date, in either case, shall be entitled to receive (and retain) such interest (including Liquidated Damages, if

any) and need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

Principal of and interest on, Global Securities shall be payable to the Depositary in immediately available funds.

Principal on Physical Securities shall be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities will be payable by (i) U.S. Dollar check drawn on a bank located in the city where the Corporate Trust Office of the Trustee is located mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount in excess of \$5,000,000, wire transfer in immediately available funds.

The Securities shall be redeemable at the option of the Company as provided in Article 10 hereof.

The Securities shall have the Purchase Rights exercisable at the option of Holders as provided in Article 11 hereof.

The Securities shall be convertible as provided in Article 12 hereof.

The Securities shall be subordinated in right of payment to Senior Debt of the Company as provided in Article 13 hereof.

SECTION 2.2. Form of Securities. The Securities and the Trustee's certificate of authentication to be borne by such Securities shall be substantially in the form annexed hereto as Exhibit A, which is incorporated in and made a part of this Indenture. The terms and provisions contained in the form of Security shall constitute, and are hereby expressly made, a part of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Securities may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Securities may be listed or designated for issuance, or to conform to usage.

The Securities will be offered and sold only to QIBs in reliance on Rule 144A and outside the United States in accordance with Regulation S and shall be issued initially only in the form of one or more permanent Global Securities (each, a "Global Security") in registered form without interest coupons. The Global Securities shall be:

- (1) duly executed by the Company and authenticated by the Trustee as hereinafter provided;
- (2) registered in the name of the Depositary (or its nominee) for credit to the respective accounts of the Holders at the Depositary; and
- (3) deposited with the Trustee, as custodian for the Depositary.

The Global Securities shall be substantially in the form of Security set forth in Exhibit A annexed hereto (including the text and schedule called for by footnotes 1 and 2 thereto). The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary (or its nominee), in accordance with the instructions given by the Holder thereof, as hereinafter provided.

Securities issued in exchange for interests in the Global Securities pursuant to Section 2.8(d) hereof shall be issued in the form of permanent definitive Securities (the “Physical Securities”) in registered form without interest coupons. The Physical Securities shall be substantially in the form set forth in Exhibit A annexed hereto.

The Securities shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the Officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 2.3. Legends

(a) Restricted Securities Legends. Each Security issued hereunder shall, upon issuance, bear the legend set forth in Section 2.3(a)(i) or Section 2.3(a)(ii) (each, a “Restricted Securities Legend”), as the case may be, and such legend shall not be removed except as provided in Section 2.3(a)(iii). Each Security that bears or is required to bear the Restricted Securities Legend set forth in Section 2.3(a)(i) (together with any Common Stock issued upon conversion of the Securities and required to bear the Restricted Securities Legend set forth in Section 2.3(a)(ii), collectively, the “Restricted Securities”) shall be subject to the restrictions on transfer set forth in this Section 2.3(a) (including the Restricted Securities Legend set forth below), and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, shall be deemed to have agreed to be bound by all such restrictions on transfer.

As used in Section 2.3(a), the term “transfer” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(i) Restricted Securities Legend for Securities. Except as provided in Section 2.3(a)(iii), until two years after the original issuance date of any Security, any certificate evidencing such Security (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.3(a)(ii), if applicable) shall bear a Restricted Securities Legend in substantially the following form:

THIS DEBENTURE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE “SECURITIES ACT”), AND THIS DEBENTURE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS DEBENTURE IS HEREBY NOTIFIED THAT THE SELLER OF THIS DEBENTURE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS DEBENTURE AGREES FOR THE BENEFIT OF EQUINIX, INC. THAT (A) THIS DEBENTURE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (B) THE HOLDER WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE

UPON CONVERSION OF THIS SECURITY EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT AND (C) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS DEBENTURE FROM IT OF THE RESTRICTIONS REFERRED TO IN (A) AND (B) ABOVE.

(ii) Restricted Securities Legend for Common Stock Issued upon Conversion of the Securities Except as provided in Section 2.3(a)(iii), until two years after the original issuance date of any Security, any stock certificate representing Common Stock issued upon conversion of such Security shall bear a Restricted Securities Legend in substantially the following form:

THE COMMON STOCK EVIDENCED HEREBY (OR ITS PREDECESSOR) HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"). THE HOLDER OF THIS CERTIFICATE AGREES FOR THE BENEFIT OF EQUINIX, INC. (THE "COMPANY") THAT (A) THE COMMON STOCK EVIDENCED HEREBY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (I) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(k) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (II) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (3) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (B) THE HOLDER WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE COMMON STOCK EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT AND (C) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE COMMON STOCK EVIDENCED HEREBY FROM IT OF THE RESTRICTIONS REFERRED TO IN (A) AND (B) ABOVE.

(iii) Removal of the Restricted Securities Legends. Each Security or share of Common Stock issued upon conversion of such Security shall bear the Restricted Securities Legend set forth in Section 2.3(a)(i) or 2.3(a)(ii), as the case may be, until the earlier of:

(A) two years after the original issuance date of such Security;

(B) such Security or Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale); or

(C) such Common Stock has been issued upon conversion of Securities that have been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale).

The Holder must give notice thereof to the Trustee and any transfer agent for the Common Stock, as applicable.

Notwithstanding the foregoing, the Restricted Securities Legend may be removed if there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company that neither such legend nor the restrictions on transfer set

forth therein are required to ensure that transfers of such Security will not violate the registration requirements of the Securities Act. Upon provision of such satisfactory evidence, the Trustee, at the written direction of the Company, shall authenticate and deliver in exchange for such Securities another Security or Securities having an equal aggregate principal amount that does not bear such legend. If the Restricted Securities Legend has been removed from a Security as provided above, no other Security issued in exchange for all or any part of such Security shall bear such legend, unless the Company has reasonable cause to believe that such other Security is a "restricted security" within the meaning of Rule 144 and instructs the Trustee in writing to cause a Restricted Securities Legend to appear thereon.

Any Security (or security issued in exchange or substitution thereof) as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.3(a)(i) as set forth therein have been satisfied may, upon surrender of such Security for exchange to the Registrar in accordance with the provisions of Section 2.7 hereof, be exchanged for a new Security or Securities, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend required by Section 2.3(a)(i).

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.3(a)(i) as set forth therein have been satisfied may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the Restricted Securities Legend required by Section 2.3(a)(i).

(b) Global Security Legend Each Global Security shall also bear the following legend on the face thereof:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO EQUINIX, INC. (OR ITS SUCCESSOR) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, CONVERSION OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

SECTION 2.4. Execution, Authentication, Delivery and Dating Two Officers shall execute the Securities on behalf of the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and deliver such Securities as in this Indenture provided and not otherwise.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture, or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee may appoint an authenticating agent or agents reasonably acceptable to the Company with respect to the Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent.

SECTION 2.5. Registrar and Paying Agent. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the “Registrar”) and an office or agency where Securities may be presented for payment (the “Paying Agent”). The Registrar shall keep a register of the Securities (the “Register”) and of their transfer and exchange. The Company may appoint one or more co-Registrars and one or more additional Paying Agents for the Securities. The term “Paying Agent” includes any additional paying agent and the term “Registrar” includes any additional registrar. The Company may change any Paying Agent or Registrar without prior notice to any Holder.

The Company will cause each Paying Agent (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

- (1) hold all sums held by it for the payment of the principal of or interest (including Liquidated Damages, if any) on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in this Indenture;
- (2) give the Trustee notice of any Default by the Company in the making of any payment of principal or interest (including Liquidated Damages, if any); and
- (3) at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company shall give prompt written notice to the Trustee of the name and address of any Agent who is not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent or Registrar; *provided, however*, that none of the Company, its Subsidiaries or the Affiliates of the foregoing shall act:

- (i) as Paying Agent in connection with redemptions, offers to purchase and discharges, as otherwise specified in this Indenture, and
- (ii) as Paying Agent or Registrar if a Default or Event of Default has occurred and is continuing.

The Company hereby initially appoints the Trustee as Registrar and Paying Agent for the Securities.

SECTION 2.6. Paying Agent to Hold Assets in Trust. Not later than 12:00 Noon (New York City time) on each due date of the principal and interest (including Liquidated Damages, if any) on any Securities, the Company shall deposit with one or more Paying Agents money in immediately available funds sufficient to pay such principal and interest (including Liquidated Damages, if any) so becoming due. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company) shall have no further liability for the money so paid over to the Trustee.

If the Company shall act as a Paying Agent, it shall, prior to or on each due date of the principal of or interest (including Liquidated Damages, if any) on any of the Securities, segregate and hold in trust for the benefit of the Holders a sum sufficient with monies held by all other Paying Agents, to pay the principal or interest (including Liquidated Damages, if any) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as provided in this Indenture, and shall promptly notify the Trustee of its action or failure to act.

SECTION 2.7. General Provisions Relating to Transfer and Exchange. The Securities are issuable only in registered form. A Holder may transfer a Security only by written application to the Registrar stating

the name of the proposed transferee and otherwise complying with the terms of this Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Registrar in the Register. Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by the Holder of such Global Security (or its agent) and that ownership of a beneficial interest in the Security shall be required to be reflected in a book-entry. Notwithstanding the foregoing, in the case of a Restricted Security, a beneficial interest in a Global Security being transferred in reliance on an exemption from the registration requirements of the Securities Act other than in accordance with Rule 144, Rule 144A and Regulation S may only be transferred for a Physical Security.

When Securities are presented to the Registrar with a request to register the transfer or to exchange them for an equal aggregate principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including that such Securities are duly endorsed or accompanied by a written instrument of transfer duly executed by the Holder thereof or by an attorney who is authorized in writing to act on behalf of the Holder). Subject to Section 2.4 hereof, to permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request. No service charge shall be made for any registration of transfer or exchange or redemption of the Securities, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or other similar governmental charge payable upon exchanges pursuant to Section 2.14, 7.5 or 10.7 hereof).

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Securities:

- (1) for a period of 15 Business Days prior to the day of any selection of Securities for redemption under Article 10 hereof;
- (2) so selected for redemption or, if a portion of any Security is selected for redemption, such portion thereof selected for redemption; or
- (3) surrendered for conversion or, if a portion of any Security is surrendered for conversion, such portion thereof surrendered for conversion.

SECTION 2.8. Book-Entry Provisions for the Global Securities (a) The Global Securities initially shall

- (i) be registered in the name of the Depositary (or a nominee thereof);
- (ii) be delivered to the Trustee as custodian for such Depositary; and
- (iii) bear the Restricted Securities Legend as set forth in Section 2.3(a)(i) hereof.

Members of, or participants in, the Depositary ("DTC Participants") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under such Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing contained herein shall prevent the Company, the Trustee or any agent of the Company or Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and the DTC Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) The registered Holder of a Global Security may grant proxies and otherwise authorize any Person, including DTC Participants and Persons that may hold interests through DTC Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(c) A Global Security may not be transferred, in whole or in part, to any Person other than the Depository (or a nominee thereof), and no such transfer to any such other Person may be registered. Beneficial interests in a Global Security may be transferred in accordance with the rules and procedures of the Depository and the provisions of Section 2.9 hereof.

(d) If at any time:

(i) the Depository notifies the Company in writing that it is no longer willing or able to continue to act as Depository for the Global Securities, or the Depository ceases to be a "clearing agency" registered under the Exchange Act, and a successor Depository for the Global Securities is not appointed by the Company within 90 days of such notice or cessation;

(ii) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of the Securities in definitive form under this Indenture in exchange for all or any part of the Securities represented by a Global Security or Global Securities; or

(iii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depository for the issuance of Physical Securities in exchange for such Global Security or Global Securities,

the Depository shall surrender such Global Security or Global Securities to the Trustee for cancellation and the Company shall execute, and the Trustee, upon receipt of an Officers' Certificate and Company Order for the authentication and delivery of Securities, shall authenticate and deliver in exchange for such Global Security or Global Securities, Physical Securities of like tenor as that of the Global Securities in an aggregate principal amount equal to the aggregate principal amount of such Global Security or Global Securities. Such Physical Securities shall be registered in such names as the Depository shall identify in writing as the beneficial owners of the Securities represented by such Global Security or Global Securities (or any nominees thereof).

Notwithstanding the foregoing, in connection with any transfer of beneficial interests in a Global Security to beneficial owners pursuant to Section 2.8(d) hereof, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in such Global Security to be transferred.

SECTION 2.9. Special Transfer Provisions. Unless a Security is transferred after the time period referred to in Rule 144(k) under the Securities Act or otherwise sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale), the following provisions shall apply.

With respect to the registration of any proposed transfer of Securities to a QIB in accordance with Rule 144A:

(i) if the Securities to be transferred consist of an interest in the Global Securities, the transfer of such interest may be effected only through the book-entry system maintained by the Depository; and

(ii) if the Securities to be transferred consist of Physical Securities, the Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided on the form of Security stating, or has otherwise advised the Company and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided on the form of Security stating or has otherwise advised the Company and the Registrar in writing that:

(A) it is purchasing the Securities for its own account or an account with respect to which it exercises sole investment discretion, in each case for investment and not with a view to distribution;

(B) it and any such account is a QIB within the meaning of Rule 144A;

(C) it is aware that the sale to it is being made in reliance on Rule 144A;

(D) it acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information; and

(E) it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A.

With respect to the registration of any proposed transfer of Securities to a person who is not a U.S. Person in an offshore transaction in accordance with Regulation S:

(i) if the Securities to be transferred consist of an interest in the Global Securities, the transfer of such interest may be effected only through the book-entry system maintained by the Depositary; and

(ii) if the Securities to be transferred consist of Physical Securities, the Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating, or has otherwise advised the Company and the Registrar in writing, that the sale has been made in compliance with the provisions of Regulation S to a transferee who has signed the certification provided for on the form of Security stating or has otherwise advised the Company and the Registrar in writing that:

(A) the transfer is not being made to a person in the United States and (1) at the time the buy order was originated, the transferee was outside the United States or such transferor and any Person acting on its behalf reasonably believed and believes that the transferee was outside the United States or (2) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States;

(B) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act;

(C) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(D) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person.

In addition, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Securities in an amount equal to the principal amount of the Physical Securities to be transferred, and the Trustee shall cancel the Physical Securities so transferred.

By its acceptance of any Security bearing the Restricted Securities Legend, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and agrees that it will transfer such Security only as provided in this Indenture. The Registrar shall not register a transfer of any Security unless such transfer complies with the restrictions on transfer of such Security set forth in this Indenture. The Registrar shall be entitled to receive and rely on written instructions from the Company verifying that such transfer complies with such restrictions on transfer. In connection with any transfer of Securities, each Holder agrees by its acceptance of the Securities to furnish the Registrar or the Company such certifications, legal opinions or other information as either of them may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; *provided, however*, that the Registrar shall not be required to determine (but may rely on a determination made by the Company with respect to) the sufficiency of any such certifications, legal opinions or other information.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.8 hereof or this Section 2.9. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

SECTION 2.10. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with Section 312(a) of the TIA. If the Trustee is not the Registrar, the Company shall furnish to the Trustee prior to or on each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders relating to such Interest Payment Date or request, as the case may be.

SECTION 2.11. Persons Deemed Owners. The Company, the Trustee and any agent of the Company or the Trustee may treat the registered Holder of a Global Security as the absolute owner of such Global Security for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security be overdue, and notwithstanding any notice of ownership or writing thereon, or any notice of previous loss or theft or other interest therein. The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and interest (including Liquidated Damages, if any) on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and notwithstanding any notice of ownership or writing thereon, or any notice of previous loss or theft or other interest therein.

SECTION 2.12. Mutilated, Destroyed, Lost or Stolen Securities. If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there is delivered to the Company and the Trustee

- (1) evidence to their satisfaction of the destruction, loss or theft of any Security, and
- (2) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless,

then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and, upon request, the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion, but subject to any conversion rights, may, instead of issuing a new Security, pay such Security, upon satisfaction of the condition set forth in the preceding paragraph.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.13. Treasury Securities. In determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only such Securities of which the Trustee has received written notice and are so owned shall be so disregarded.

SECTION 2.14. Temporary Securities. Pending the preparation of Securities in definitive form, the Company may execute and the Trustee shall, upon written request of the Company, authenticate and deliver temporary Securities (printed or lithographed). Temporary Securities shall be issuable in any authorized denomination, and substantially in the form of the Securities in definitive form but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every such temporary Security shall be executed by the Company and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the Securities in definitive form. Without unreasonable delay, the Company will execute and deliver to the Trustee Securities in definitive form (other than in the case of Securities in global form) and thereupon any or all temporary Securities (other than any such Securities in global form) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 9.2 and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of Securities in definitive form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Securities in definitive form authenticated and delivered hereunder.

SECTION 2.15. Cancellation. All securities surrendered for payment, redemption, purchase, conversion, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered shall be canceled promptly by the Trustee, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. Upon written instructions of the Company, the Trustee shall destroy canceled Securities and, after such destruction, shall deliver a certificate of such destruction to the Company. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation.

SECTION 2.16. CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and the Trustee shall use CUSIP numbers in notices of redemption or exchange as a convenience to Holders; *provided, however*, that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any such notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

SECTION 2.17. Defaulted Interest. If the Company fails to make a payment of interest (including Liquidated Damages, if any) on any Security when due and payable ("Defaulted Interest"), it shall pay such Defaulted Interest plus (to the extent lawful) any interest payable on the Defaulted Interest, in any lawful manner. It may elect to pay such Defaulted Interest, plus any such interest payable on it, to the Persons who are Holders of such Securities on which the interest is due on a subsequent Special Record Date. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security. The Company shall fix any such Special Record Date and payment date for such payment. At least 15 days before any such Special Record Date, the Company shall mail to Holders affected thereby a notice that states the Special Record Date, the Interest Payment Date, and amount of such interest (and such Liquidated Damages, if any) to be paid.

ARTICLE 3

SATISFACTION AND DISCHARGE

SECTION 3.1. Satisfaction and Discharge of Indenture. When:

(1) The Company shall deliver to the trustee for cancellation all Securities previously authenticated (other than any Securities which have been destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) and not previously canceled, or

(2) (A) All the securities not previously canceled or delivered to the trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and

(B) The Company shall deposit with the Trustee, in trust, cash in U.S. dollars which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on the Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient to pay principal of or interest (including Liquidated Damages, if any) on all of the Securities (other than any Securities which shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not previously canceled or delivered to the Trustee for cancellation, on the dates such payments of principal or interest (including Liquidated Damages, if any) are due to such date of maturity or redemption, as the case may be,

and if, in the case of either clause (1) or (2), the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to: (i) remaining rights of registration of transfer, substitution and exchange and conversion of Securities, (ii) rights hereunder of Holders to receive payments of principal of and interest (including Liquidated Damages, if any) on the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee, and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as provided in Section 14.5 hereof and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; *provided, however*, that the Company shall reimburse the Trustee for all amounts due the Trustee under Section 5.8 hereof and for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities.

SECTION 3.2. Deposited Monies To Be Held in Trust Subject to Section 3.3 hereof, all monies deposited with the Trustee pursuant to Section 3.1 hereof shall be held in trust and applied by it to the payment, notwithstanding the provisions of Article 13 hereof, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Securities for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest (including Liquidated Damages, if any). All monies deposited with the Trustee pursuant to Section 3.1 hereof (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon request of the Company.

SECTION 3.3. Return of Unclaimed Monies. The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal or interest (including Liquidated Damages, if any) that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

ARTICLE 4

DEFAULTS AND REMEDIES

SECTION 4.1. **Events of Default.** An “Event of Default” with respect to the Securities occurs when any of the following occurs (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article 13 hereof or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the Company defaults in the payment of the principal on any of the Securities when it becomes due and payable, at Maturity, upon redemption or exercise of a Purchase Right or Put Purchase Right or otherwise, whether or not such payment is prohibited by Article 13 hereof; or

(b) the Company defaults in the payment of interest (including Liquidated Damages, if any) on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by Article 13 hereof; or

(c) the Company fails to deliver shares of Common Stock, together with cash instead of fractional shares, when those shares of Common Stock or cash instead of fractional shares is required to be delivered following conversion of a Security in accordance with Article 12, and that failure continues for 10 days; or

(d) the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or this Indenture and the failure continues for a period of 60 days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities; or

(e) (i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either (i) or (ii) above, for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the Outstanding Securities; or

(f) the Company fails, within 30 days after the occurrence of a Fundamental Change, to give to each Holder of Securities notice of the occurrence of such Fundamental Change and the resulting Purchase Right of such Holder; or

(g) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable U.S. federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(h) the commencement by the Company of a voluntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable

U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable U.S. federal or state law, or the consent by the Company to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission by the Company in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company expressly in furtherance of any such action.

SECTION 4.2. Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Outstanding Securities (other than an Event of Default specified in Section 4.1(g) or 4.1(h) hereof) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Outstanding Securities, by written notice to the Company, may declare due and payable 100% of the principal amount of all Outstanding Securities plus any accrued and unpaid interest to the date of payment. Upon a declaration of acceleration, such principal and accrued and unpaid interest to the date of payment shall be immediately due and payable.

If an Event of Default specified in Section 4.1(g) or 4.1(h) hereof occurs, all unpaid principal of and accrued and unpaid interest (including Liquidated Damages, if any) on the Outstanding Securities shall become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holder.

The Holders of a majority in aggregate principal amount of the Outstanding Securities by written notice to the Trustee may rescind and annul an acceleration and its consequences if:

(1) all existing Events of Default, other than the nonpayment of principal of or interest on the Securities which has become due solely because of the acceleration, have been remedied, cured or waived, and

(2) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction;

provided, however, that in the event such declaration of acceleration has been made based on the existence of an Event of Default under Section 4.1(e) hereof and such Event of Default has been remedied, cured or waived in accordance with Section 4.1(e) hereof, then, without any further action by the Holders, such declaration of acceleration shall be rescinded automatically and the consequences of such declaration shall be annulled. No such rescission or annulment shall affect any subsequent Default or impair any right consequent thereon.

SECTION 4.3. Other Remedies. If an Event of Default with respect to Outstanding Securities occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities.

The Trustee may maintain a proceeding in which it may prosecute and enforce all rights of action and claims under this Indenture or the Securities, even if it does not possess any of the Securities or does not produce any of them in the proceeding.

SECTION 4.4. Waiver of Past Defaults. The Holders, either (a) through the written consent of not less than a majority in aggregate principal amount of the Outstanding Securities or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, may, on behalf of the Holders of all of the Securities, waive an existing Default or Event of Default, except a Default or Event of Default:

(1) in the payment of the principal of or interest (including Liquidated Damages, if any) on any Security *provided, however*, that subject to Section 4.7 hereof, the Holders of a majority in aggregate principal amount of the Outstanding Securities may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration);

(2) in respect of the right to convert any Security in accordance with Article 12; or

(3) in respect of a covenant or provision hereof which, under Section 7.2 hereof, cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; *provided, however*, that no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 4.5. Control by Majority. The Holders, either (a) through the written consent of not less than a majority in aggregate principal amount of the Outstanding Securities, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that:

(1) conflicts with any law or with this Indenture,

(2) the Trustee determines may be unduly prejudicial to the rights of the Holders not joining therein, or

(3) may expose the Trustee to personal liability.

The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 4.6. Limitation on Suit. No Holder of any Security shall have any right to pursue any remedy with respect to this Indenture or the Securities (including instituting any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a receiver or trustee) unless:

(1) such Holder has previously given written notice to the Trustee of an Event of Default that is continuing;

(2) the Holders of at least 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to pursue the remedy;

(3) such Holder or Holders have offered to the Trustee indemnity satisfactory to it against any costs, expenses and liabilities incurred in complying with such request;

(4) the Trustee has failed to comply with the request for 60 days after its receipt of such notice, request and offer of indemnity; and

(5) during such 60-day period, no direction inconsistent with such written request has been given to the Trustee by the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such amount as shall have acted at a meeting pursuant to the provisions of this Indenture);

provided, however, that no one or more of such Holders may use this Indenture to prejudice the rights of another Holder or to obtain preference or priority over another Holder.

SECTION 4.7. Unconditional Rights of Holders to Receive Payment and to Convert Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest (including Liquidated Damages, if any) on such Security on the Stated Maturity expressed in such Security (or, in the case of redemption, on the Redemption Date, or in the case of the exercise of a Purchase Right or Put Purchase Right, on the Purchase Date or Put Purchase Date, as applicable) and to convert such Security in accordance with Article 12, and to bring suit for the enforcement of any such payment on or after such respective dates and right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

SECTION 4.8. Collection of Indebtedness and Suits for Enforcement by the Trustee The Company covenants that if:

(1) a Default or Event of Default occurs in the payment of any interest (including Liquidated Damages, if any) on any Security when such interest (including Liquidated Damages, if any) becomes due and payable and such Default or Event of Default continues for a period of 30 days, or

(2) a Default or Event of Default occurs in the payment of the principal of any Security at the Maturity thereof, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable (as expressed therein or as a result of any acceleration effected pursuant to Section 4.2 hereof) on such Securities for principal and interest (including Liquidated Damages, if any) and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and on any overdue interest (including Liquidated Damages, if any), in each case at the Interest Rate, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 4.9. Trustee May File Proofs of Claim In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company or its creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest (including Liquidated Damages, if any)) shall be entitled and empowered, by intervention in such proceeding or otherwise, (1) to file and prove a claim for the whole amount of principal and interest (including Liquidated Damages, if any) owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of Securities allowed in such judicial proceeding, and (2) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceedings is hereby authorized by each Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 5.8.

Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept, or adopt on behalf of any Holder of a Security, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding.

SECTION 4.10. Restoration of Rights and Remedies. If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 4.11. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 2.12, no right or remedy conferred in this Indenture upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 4.12. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Securities may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities, as the case may be.

SECTION 4.13. Application of Money Collected. Subject to Article 13, any money and property collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money and property on account of principal or interest (including Liquidated Damages, if any), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee;

SECOND: To the payment of the amounts then due and unpaid for principal of and interest (including Liquidated Damages, if any) on the Securities and coupons in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and interest (including Liquidated Damages, if any), respectively; and

THIRD: Any remaining amounts shall be repaid to the Company.

SECTION 4.14. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of or interest (including Liquidated Damages, if any) on any Security on or after the Stated Maturity expressed in such Security (or, in the case of redemption or exercise of a Purchase Right, on or after the Redemption Date) or for the enforcement of the right to convert any Security in accordance with Article 12.

SECTION 4.15. Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim to take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 5

THE TRUSTEE

SECTION 5.1. Certain Duties and Responsibilities. (a) Except during the continuance of an Event of Default,

(1) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture or the TIA, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided, however*, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates or opinions to determine whether or not, on their face, they conform to the requirements of this Indenture (but need not investigate or confirm the accuracy of any facts stated therein).

(b) In case an Event of Default actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) This paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 5.1;

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with a direction received by it of the Holders of a majority in principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of this Indenture) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(d) Whether or not herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 5.1.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity

satisfactory to it against any loss, liability, cost or expense (including, without limitation, reasonable fees of counsel).

(f) The Trustee shall not be obligated to pay interest on any money or other assets received by it unless otherwise agreed in writing with the Company. Assets held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be deemed to have notice or actual knowledge of any Event of Default or a Registration Default (as such term is defined in the Registration Rights Agreement) or the obligation of the Company to pay Liquidated Damages unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact a Default is received by the Trustee pursuant to Section 14.2 hereof, and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee hereunder, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Paying Agent, authenticating agent, Conversion Agent or Registrar acting hereunder.

SECTION 5.2. Certain Rights of Trustee. Subject to the provisions of Section 5.1 hereof and subject to Sections 315(a) through (d) of the TIA:

(1) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel

(3) The Trustee may act through attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(4) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith which it believed to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, unless the Trustee's conduct constitutes negligence.

(5) The Trustee may consult with counsel of its selection and the advice of such counsel as to matters of law shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(6) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(7) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty unless so specified herein.

SECTION 5.3. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest (as such term is defined in Section 310(b) of the TIA), it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (to the extent permitted under Section 310(b) of the TIA) or resign. Any agent may do the same with like rights and duties. The Trustee is also subject to Sections 5.11 and 5.12 hereof.

SECTION 5.4. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise expressly agreed with the Company.

SECTION 5.5. Trustee's Disclaimer. The recitals contained herein and in the Securities (except for those in the certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity, sufficiency or priority of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 5.6. Notice of Defaults. Within 90 days after the occurrence of any Default or Event of Default hereunder of which the Trustee has received written notice, the Trustee shall give notice to Holders pursuant to Section 14.2 hereof, unless such Default or Event of Default shall have been cured or waived; *provided, however*, that, except in the case of a Default or Event of Default in the payment of the principal of or interest (including Liquidated Damages, if any), or in the payment of any redemption or purchase obligation, on any Security, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders.

SECTION 5.7. Reports by Trustee to Holders. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required by Section 313 of the TIA at the times and in the manner provided by the TIA.

A copy of each report at the time of its mailing to Holders shall be filed with the SEC, if required, and each stock exchange, if any, on which the Securities are listed. The Company shall promptly notify the Trustee when the Securities become listed on any stock exchange.

SECTION 5.8. Compensation and Indemnification. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Company covenants and agrees to pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by it or on its behalf in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its negligence or bad faith. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 4.1 hereof, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. The Company also covenants to indemnify the Trustee and its officers, directors, employees and agents for, and to hold such Persons harmless against, any loss, liability or expense incurred by them, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of their duties hereunder, including the costs and expenses of defending themselves against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to the negligence or willful misconduct of such Persons. The obligations of the Company under this Section 5.8 to compensate and indemnify the Trustee and its officers, directors, employees and agents and to pay or reimburse such Persons for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities, and the Securities are hereby

subordinated to such senior claim. "Trustee" for purposes of this Section 5.8 shall include any predecessor Trustee, but the negligence or willful misconduct of any Trustee shall not affect the indemnification of any other Trustee.

SECTION 5.9. Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 5.9.

The Trustee may resign and be discharged from the trust hereby created by so notifying the Company in writing. The Holders of at least a majority in aggregate principal amount of Outstanding Securities may remove the Trustee by so notifying the Trustee and the Company in writing. The Company must remove the Trustee if:

- (i) the Trustee fails to comply with Section 5.11 hereof or Section 310 of the TIA;
- (ii) the Trustee becomes incapable of acting;
- (iii) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law; or
- (iv) a Custodian or public officer takes charge of the Trustee or its property.

If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Company shall promptly appoint a successor Trustee. The Trustee shall be entitled to payment of its fees and reimbursement of its expenses while acting as Trustee. Within one year after the successor Trustee takes office, the Holders of at least a majority in aggregate principal amount of Outstanding Securities may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

Any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee if the Trustee fails to comply with Section 5.11 hereof.

If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation or removal, the resigning or removed Trustee, as the case may be, may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The Company shall mail a notice of the successor Trustee's succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee. Notwithstanding replacement of the Trustee pursuant to this Section 5.9, the Company's obligations under Section 5.8 hereof shall continue for the benefit of the retiring Trustee with respect to expenses, losses and liabilities incurred by it prior to such replacement.

SECTION 5.10. Successor Trustee by Merger, Etc. Subject to Section 5.11 hereof, if the Trustee consolidates with, merges or converts into, or transfers or sells all or substantially all of its corporate trust business (including the administration of the trust created by this Indenture) to, another corporation or national banking association, the successor entity without any further act shall be the successor Trustee as to the Securities.

SECTION 5.11. Corporate Trustee Required; Eligibility. The Trustee shall at all times satisfy the requirements of Sections 310(a)(1), (2) and (5) of the TIA. The Trustee shall at all times have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall at all times have) a combined capital and surplus of at least \$100 million as set forth in its (or its related bank holding company's) most recent published annual report of condition. The Trustee is subject to Section 310(b) of the TIA.

SECTION 5.12. Collection of Claims Against the Company. The Trustee is subject to Section 311(a) of the TIA, excluding any creditor relationship listed in Section 311(b) of the TIA. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the TIA to the extent indicated therein.

ARTICLE 6

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 6.1. Company May Consolidate, Etc., Only on Certain Terms. The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(1) in the event that the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation, limited liability company, partnership or trust organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and, if the entity surviving such transaction or transferee entity is not the Company, then such surviving or transferee entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and interest (including Liquidated Damages, if any) on all the Securities and the performance of every covenant of this Indenture on the party of the Company to be performed or observed and shall have provided for conversion rights in accordance with Section 12.11 hereof;

(2) at the time of consummation of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(3) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 6.2. Successor Substituted. Upon any consolidation or merger by the Company with or into any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety to any Person, in accordance with Section 6.1 hereof, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease to another Person, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 7

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 7.1. Without Consent of Holders of Securities. Without the consent of any Holders of Securities, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may amend this Indenture and the Securities to:

(a) add to the covenants of the Company for the benefit of the Holders of Securities;

- (b) surrender any right or power herein conferred upon the Company;
- (c) make provision with respect to the conversion rights of Holders of Securities pursuant to Section 12.11 hereof;
- (d) provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article 6 hereof;
- (e) reduce the Conversion Price; *provided, however*, that such reduction in the Conversion Price shall not adversely affect the interest of the Holders of Securities (after taking into account tax and other consequences of such reduction) in any material respect;
- (f) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
- (g) make any changes or modifications to this Indenture necessary in connection with the registration of any Securities under the Securities Act as contemplated in the Registration Rights Agreement; *provided, however*, that such action pursuant to this clause (g) does not adversely affect the interests of the Holders of Securities in any material respect;
- (h) cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein or which is otherwise defective, or make any other provisions with respect to matters or questions arising under this Indenture which the Company and the Trustee may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture;
- (i) add or modify any other provisions with respect to matters or questions arising under this Indenture which the Company and the Trustee may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture, *provided, however*, that such action pursuant to this clause (i) does not adversely affect the interests of the Holders of Securities in any material respect; or
- (j) make provision for the establishment of a book-entry system in which Holders would have the option to participate for the clearance and settlement of transactions in Securities originally issued in definitive form.

SECTION 7.2. With Consent of Holders of Securities. Except as provided below in this Section 7.2, this Indenture or the Securities may be amended or supplemented, and noncompliance by the Company in any particular instance with any provision of this Indenture or the Securities may be waived, in each case (i) with the written consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of a majority in aggregate principal amount of the Outstanding Securities represented at such meeting.

Without the written consent or the affirmative vote of each Holder of Securities affected, an amendment or waiver under this Section 7.2 may not:

- (a) change the Stated Maturity of the principal of, or any installment of interest (including Liquidated Damages, if any) on, any Security;
- (b) reduce the principal amount of or premium, if any, on any Security;
- (c) reduce the Interest Rate or interest (including Liquidated Damages, if any) on any Security;
- (d) change the currency of payment of principal of, premium, if any, or interest (including Liquidated Damages, if any) on any Security;

- (e) impair the right of any Holder to institute suit for the enforcement of any payment on or with respect to, or the conversion of, any Security;
- (f) modify the obligation of the Company to maintain an office or agency in The City of New York pursuant to Section 9.2 hereof;
- (g) except as permitted by Section 12.11 hereof, adversely affect the right to convert any Security as provided in Article 12 hereof;
- (h) adversely affect the Purchase Right or Put Purchase Right;
- (i) modify the subordination provisions of the Securities in a manner adverse to the Holders of Securities;
- (j) modify any of the provisions of this Section, Section 4.4 or Section 14.11, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; or
- (k) reduce the requirements of Section 8.4 hereof for quorum or voting, or reduce the percentage in aggregate principal amount of the Outstanding Securities the consent of whose Holders is required for any such supplemental indenture or the consent of whose Holders is required for any waiver provided for in this Indenture.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 7.3. Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities shall be set forth in a supplemental indenture that complies with the TIA as then in effect.

SECTION 7.4. Revocation of Consents and Effect of Consents or Votes. Until an amendment, supplement or waiver becomes effective, a written consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security; *provided, however*, that unless a record date shall have been established, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective.

An amendment, supplement or waiver becomes effective on receipt by the Trustee of written consents from or affirmative votes by, as the case may be, the Holders of the requisite percentage of aggregate principal amount of the Outstanding Securities, and thereafter shall bind every Holder of Securities; *provided, however*, if the amendment, supplement or waiver makes a change described in any of clauses (a) through (k) of Section 7.2 hereof, the amendment, supplement or waiver shall bind only each Holder of a Security which has consented to it or voted for it, as the case may be, and every subsequent Holder of a Security or portion of a Security that evidences the same indebtedness as the Security of the consenting or affirmatively voting, as the case may be, Holder.

SECTION 7.5. Notation on or Exchange of Securities. If an amendment, supplement or waiver changes the terms of a Security:

- (a) the Trustee may require the Holder of a Security to deliver such Security to the Trustee, the Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security thereafter authenticated; or

(b) if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 7.6. Trustee to Sign Amendment, Etc. The Trustee shall sign any amendment authorized pursuant to this Article 7 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If the amendment does adversely affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may but need not sign it. In signing or refusing to sign such amendment, the Trustee shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment is authorized or permitted by this Indenture.

ARTICLE 8

MEETING OF HOLDERS OF SECURITIES

SECTION 8.1. Purposes for Which Meetings May Be Called. A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities.

Notwithstanding anything contained in this Article 8, the Trustee may, during the pendency of a Default or an Event of Default, call a meeting of Holders of Securities in accordance with its standard practices.

SECTION 8.2. Call Notice and Place of Meetings. (a) The Trustee may at any time call a meeting of Holders of Securities for any purpose specified in Section 8.1 hereof, to be held at such time and at such place in The City of New York. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting, in general terms the action proposed to be taken at such meeting and the percentage of the principal amount of the Outstanding Securities which shall constitute a quorum at such meeting, shall be given, in the manner provided in Section 14.2 hereof, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 8.1 hereof, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities in the amount specified, as the case may be, may determine the time and the place in The City of New York for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (a) of this Section.

SECTION 8.3. Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Securities, a Person shall be (a) a Holder of one or more Outstanding Securities or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 8.4. Quorum: Action. The Persons entitled to vote a majority in principal amount of the Outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman

of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 8.2(a) hereof, except that such notice need be given only once and not less than five days prior to the date on which the meeting is scheduled to be reconvened.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the second paragraph of Section 7.2 hereof) shall be effectively passed and decided if passed or decided by the Persons entitled to vote not less than a majority in principal amount of Outstanding Securities represented and voting at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities, whether or not present or represented at the meeting.

SECTION 8.5. Determination of Voting Rights; Conduct and Adjournment of Meetings (a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 8.2(b) hereof, in which case the Company or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting.

(c) At any meeting, each Holder of a Security or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by him *provided, however,* that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

(d) Any meeting of Holders of Securities duly called pursuant to Section 8.2 hereof at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 8.6. Counting Votes and Recording Action of Meetings The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 8.2 hereof and, if applicable, Section 8.4 hereof. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 9
COVENANTS

SECTION 9.1. Payment of Principal and Interest. The Company will duly and punctually pay the principal of and interest (including Liquidated Damages, if any) on the Securities in accordance with the terms of the Securities and this Indenture. The Company will deposit or cause to be deposited with the Trustee as directed by the Trustee, no later than the day of the Stated Maturity of any Security or installment of interest (including Liquidated Damages, if any), all payments so due.

SECTION 9.2. Maintenance of Offices or Agencies. The Company hereby appoints the Trustee's Corporate Trust Office as its office in The City of New York where Securities may be:

- (i) presented or surrendered for payment;
- (ii) surrendered for registration of transfer or exchange;
- (iii) surrendered for conversion;

and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served.

The Company may at any time and from time to time vary or terminate the appointment of any such office or appoint any additional offices for any or all of such purposes; *provided, however*, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of and interest (including Liquidated Damages, if any) on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 9.3 hereof, the Company will maintain in The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 14.2 hereof, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

If at any time the Company shall fail to maintain any such required office or agency in The City of New York, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made at, and notices and demands may be served on, the Corporate Trust Office of the Trustee.

SECTION 9.3. Corporate Existence. Subject to Article 6 hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; *provided, however*, that the Company shall not be required to preserve any such right or franchise if the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 9.4. Maintenance of Properties. The Company will maintain and keep its properties and every part thereof in such repair, working order and condition, and make or cause to be made all such needful and proper repairs, renewals and replacements thereof, as in the judgment of the Company are necessary in the interests of the Company; *provided, however*, that nothing contained in this Section shall prevent the Company from selling, abandoning or otherwise disposing of any of its properties or discontinuing a part of its business from time to time if, in the judgment of the Company, such sale, abandonment, disposition or discontinuance is advisable and does not materially adversely affect the interests or business of the Company.

SECTION 9.5. Payment of Taxes and Other Claims. The Company will, and will cause any Significant Subsidiary to, promptly pay and discharge or cause to be paid and discharged all material taxes, assessments

and governmental charges or levies lawfully imposed upon it or upon its income or profits or upon any of its property, real or personal, or upon any part thereof, as well as all material claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon its property; *provided, however*, that neither the Company nor any Significant Subsidiary shall be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge, levy or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Company or such Significant Subsidiary, as the case may be, shall have set aside on its books reserves deemed by it adequate with respect thereto.

SECTION 9.6. Reports. (a) The Company shall make available to the Trustee within 15 days after it files them with the SEC copies of the annual and quarterly reports and other information, documents and other reports deemed “filed” for the purposes of Section 18 of the Exchange Act or incorporated by reference in any filing under the Securities Act or the Exchange Act (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; *provided, however*, that the Company shall not be required to deliver to the Trustee any materials for which the Company has sought and received confidential treatment by the SEC. The Company also shall comply with the other provisions of Section 314(a) of the TIA.

(b) If at any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder of a Security, the Company will promptly furnish or cause to be furnished to such Holder or to a prospective purchaser of such Security designated by such Holder, as the case may be, the information, if any, required to be delivered by it pursuant to Rule 144A(d)(4) under the Securities Act to permit compliance with Rule 144A in connection with the resale of such Security; *provided, however*, that the Company shall not be required to furnish such information in connection with any request made on or after the date which is two years from the later of the date such Security was last acquired from the Company or an Affiliate of the Company.

SECTION 9.7. Compliance Certificate. The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Company, an Officers’ Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company, they would normally have knowledge of any failure by the Company to comply with all conditions, or Default by the Company with respect to any covenants, under this Indenture, and further stating whether or not they have knowledge of any such failure or Default and, if so, specifying each such failure or Default and the nature thereof. Within five Business Days of an Officer of the Company coming to have actual knowledge of a Default, regardless of the date, the Company shall deliver an Officers’ Certificate to the Trustee specifying such Default and the nature and status thereof.

SECTION 9.8. Resale of Certain Securities. During the period of two years after the last date of original issuance of any Securities, the Company shall not, and shall not permit any of its Affiliates to, resell any Securities, or shares of Common Stock issuable upon conversion of the Securities, that constitute “restricted securities” under Rule 144 and that are acquired by any of them within the United States or to “U.S. persons” (as defined in Regulation S) except pursuant to an effective registration statement under the Securities Act or an applicable exemption therefrom. The Trustee shall have no responsibility or liability in respect of the Company’s performance of its agreement in the preceding sentence.

SECTION 9.9. Liquidated Damages. If Liquidated Damages are payable by the Company pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee an Officers’ Certificate to that effect stating (i) the amount of such Liquidated Damages that are payable, (ii) the reason why such Liquidated Damages are payable and (iii) the date on which such damages are payable. Unless and until a Responsible Officer of the Trustee receives such an Officers’ Certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable. If the Company has paid Liquidated Damages directly to the persons entitled to such amounts, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

ARTICLE 10

REDEMPTION OF SECURITIES

SECTION 10.1. Optional Redemption. The Securities are not redeemable prior to February 15, 2009. On and after February 15, 2009, the Company may, at its option, redeem the Securities in whole at any time or in part from time to time, on any date prior to maturity, upon notice as set forth in Section 10.4, at a redemption price equal to 100% of the principal amount of the Securities (the "Optional Redemption Price"), plus any interest accrued but not paid prior to the Optional Redemption Date.

SECTION 10.2. Notice to Trustee. If the Company elects to redeem Securities pursuant to the redemption provisions of Section 10.1 hereof, it shall notify the Trustee at least 30 days prior to the Redemption Date of such intended Redemption Date, the principal amount of Securities to be redeemed and the CUSIP numbers of the Securities to be redeemed.

SECTION 10.3. Selection of Securities to Be Redeemed. If fewer than all the Securities are to be redeemed, the Trustee shall select the particular Securities to be redeemed from the Outstanding Securities by a method that complies with the requirements of any exchange on which the Securities are listed, or, if the Securities are not listed on an exchange, on a pro rata basis or by lot or in accordance with any other method the Trustee considers fair and appropriate. Securities and portions thereof that the Trustee selects shall be in amounts equal to the minimum authorized denominations for Securities to be redeemed or any integral multiple thereof.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (*provided, however*, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and the Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

SECTION 10.4. Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 14.2 hereof to the Holders of Securities to be redeemed. Such notice shall be given not less than 20 or more than 60 days prior to the Redemption Date.

All notices of redemption shall state:

- (1) the Redemption Date;
- (2) the Redemption Price and interest accrued and unpaid to the Redemption Date, if any;
- (3) if fewer than all the Outstanding Securities are to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities which will be Outstanding after such partial redemption;
- (4) that on the Redemption Date the Redemption Price and interest accrued and unpaid to the Redemption Date, if any, will become due and payable upon each such Security to be redeemed, and that interest thereon shall cease to accrue on and after such date;

(5) the Conversion Price, the date on which the right to convert the principal of the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion;

(6) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued and unpaid interest, if any; and

(7) the CUSIP number of the Securities.

The notice given shall specify the last date on which exchanges or transfers of Securities may be made pursuant to Section 2.7 hereof, and shall specify the serial numbers of Securities and the portions thereof called for redemption.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name of and at the expense of the Company.

SECTION 10.5. Effect of Notice of Redemption. Notice of redemption having been given as provided in Section 10.4 hereof, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued and unpaid interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with such notice, such Security shall be paid by the Company at the Redemption Price plus accrued and unpaid interest, if any; *provided, however*, that the installments of interest on Securities whose Stated Maturity is prior to or on the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.1 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the Interest Rate.

SECTION 10.6. Deposit of Redemption Price. Prior to or on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent an amount of money sufficient to pay the Redemption Price of all the Securities to be redeemed on that Redemption Date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit, and accrued and unpaid interest, if any, on such Securities.

If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the fourth to last paragraph of Section 2.1 hereof) be paid to the Company on Company Request or, if then held by the Company, shall be discharged from such trust.

SECTION 10.7. Securities Redeemed in Part. Any Security which is to be redeemed only in part shall be surrendered at an office or agency of the Company designated for that purpose pursuant to Section 9.2 hereof (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or the Holder's attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE 11

PURCHASE OF SECURITIES

SECTION 11.1. Purchase Right Upon Fundamental Change. (a) In the event that a Fundamental Change shall occur, each Holder shall have the right (the "Purchase Right"), at the Holder's option to require

the Company to purchase, and upon the exercise of such right the Company shall purchase, all of such Holder's Securities not theretofore called for redemption, or any portion of the principal amount thereof that is equal to \$1,000 or any integral multiple thereof (*provided, however*, that no single Security may be purchased in part unless the portion of the principal amount of such Security to be Outstanding after such purchase is equal to \$1,000 or integral multiples thereof), on the date (the "Purchase Date") that is 45 days after the date of the Company Notice at a purchase price equal to 100% of the principal amount of the Securities to be purchased (the "Purchase Price"), plus interest accrued and unpaid to, but excluding, the Purchase Date; *provided, however*, that installments of interest on Securities whose Stated Maturity is prior to or on the Purchase Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.1 hereof.

(b) Whenever in this Indenture (including Sections 2.2, 4.1(a) and 4.7 hereof) or Exhibit A annexed hereto there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Purchase Price or the Put Purchase Price, as the case may be, payable in respect to such Security to the extent that such Purchase Price or the Put Purchase Price, as the case may be, is, was or would be so payable at such time, and express mention of the Purchase Price or the Put Purchase Price, as the case may be, in any provision of this Indenture shall not be construed as excluding the Purchase Price or the Put Purchase Price, as the case may be, in those provisions of this Indenture when such express mention is not made; *provided, however*, that for the purposes of Article 13 hereof, such reference shall be deemed to include reference to the Purchase Price or the Put Purchase Price, as the case may be, only to the extent the Purchase Price or the Put Purchase Price, as the case may be, is payable in cash.

SECTION 11.2. Purchase of Securities by the Company at Option of the Holder

(a) General. Each Holder shall have the right to require the Company to purchase all or a portion of its Securities on February 15, 2009, February 15, 2014 and February 15, 2019 (or, if any such date is not a Business Day, on the immediately succeeding Business Day) (each, a "Put Purchase Date"), at 100% of the principal amount of the Securities to be so purchased, plus accrued and unpaid interest, if any, to, but excluding, such Put Purchase Date (the "Put Purchase Price").

(b) Company Notice. On or before the twenty-third (23rd) Business Day prior to each Put Purchase Date, the Company shall provide to the Trustee, the Paying Agent and to all Holders at their respective addresses as shown on the Register, and to beneficial owners of the Securities where required by applicable law, a notice stating, among other things:

- (i) the name and address of the Trustee, the Paying Agent and the Conversion Agent; and
- (ii) the procedures the Holders must follow to require the Company to purchase their Securities.

Simultaneously with providing such notice, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time.

(c) Conditions to the Company's Obligation to Purchase. The Company will be required to purchase only Securities with respect to which each of the following conditions has been satisfied:

(i) delivery to the Paying Agent by the Holder of a written notice of purchase (a "Purchase Notice") during the period beginning at any time from the opening of business on the date that is twenty-three (23) Business Days prior to the relevant Put Purchase Date until the close of business on the third (3rd) Business Day prior to such Put Purchase Date stating:

- (1) the applicable Depository procedures or, in the case of Physical Securities, the certificate number(s) of the Holder's Securities to be delivered for purchase;

(2) the portion of the principal amount of Securities to be purchased, in integral multiples of \$1,000; and

(3) that the Securities are to be purchased by the Company pursuant to paragraph 6(b) of the Securities and this Section 11.2;

(ii) delivery of such Securities to the Trustee or Paying Agent prior to, on or after the Put Purchase Date (together with all necessary endorsements); and

(iii) there shall not have occurred and be continuing an Event of Default, other than an Event of Default that is cured with respect to all Securities by the payment of the Put Purchase Price.

(d) Withdrawal of Purchase Notice. A Holder may withdraw any Purchase Notice in whole or in part by a written notice of withdrawal delivered to the Trustee or the Paying Agent prior to the close of business on the third (3rd) Business Day prior to the applicable Put Purchase Date. The notice of withdrawal must state:

(i) the principal amount of the withdrawn Securities;

(ii) with respect to Physical Securities, the certificate number(s) of the withdrawn Securities; and

(iii) the principal amount of Securities, if any, which remains subject to the Purchase Notice.

The Paying Agent shall promptly notify the Company of the receipt by it of any Purchase Notice or written notice of withdrawal thereof.

The Put Purchase Price shall be so paid pursuant to this Section 11.2 only if the Securities so delivered by the Holder conform in all respects to the description thereof in the related Purchase Notice, as determined by the Company in its sole discretion.

(e) Payment of Put Purchase Price by the Company; Effect on Holders of Purchased Securities The Company shall pay the Put Purchase Price to the Paying Agent promptly following the later of the relevant Put Purchase Date or the time of book-entry transfer or delivery of the purchased Securities. If either the Trustee or the Paying Agent holds money or securities sufficient to pay the Put Purchase Price on the Business Day immediately following the relevant Put Purchase Date, then:

(i) the purchased Securities will cease to be Outstanding and interest will cease to accrue (whether or not book-entry transfer of the purchased Securities is made or whether or not the purchased Securities are delivered to the Paying Agent); and

(ii) all other rights of the Holders of such purchased Securities will terminate (other than the right to receive the Put Purchase Price upon delivery or transfer of such purchased Securities).

SECTION 11.3. Notices; Method of Exercising Purchase Right, Etc (a) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, prior to or on the 30th day after the occurrence of a Fundamental Change, the Company, or, at the written request and expense of the Company prior to or on the 30th day after such occurrence, the Trustee shall give to all Holders of Securities notice, in the manner provided in Section 14.2 hereof, of the occurrence of the Fundamental Change and of the Purchase Right set forth herein arising as a result thereof (the "Company Notice"). The Company shall also deliver a copy of such notice of a Purchase Right to the Trustee. Each notice of a Purchase Right shall state:

(1) the Purchase Date;

(2) the date by which the Purchase Right must be exercised;

(3) the Purchase Price and accrued and unpaid interest, if any;

(4) a description of the procedure which a Holder must follow to exercise a Purchase Right, and the place or places where such Securities, are to be surrendered for payment of the Purchase Price and accrued and unpaid interest, if any;

(5) that on the Purchase Date the Purchase Price and accrued and unpaid interest, if any, will become due and payable upon each such Security designated by the Holder to be purchased, and that interest thereon shall cease to accrue on and after said date;

(6) the conversion rate then in effect, the date on which the right to convert the principal amount of the Securities to be purchased will terminate and the place where such Securities may be surrendered for conversion, and

(7) the place or places where such Securities, together with the Option to Elect Repayment Upon a Fundamental Change certificate included in Exhibit A annexed hereto are to be delivered for payment of the Purchase Price and accrued and unpaid interest, if any.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder's right to exercise a Purchase Right or affect the validity of the proceedings for the purchase of Securities.

If any of the foregoing provisions or other provisions of this Article 11 are inconsistent with applicable law, such law shall govern.

(b) To exercise a Purchase Right, a Holder shall deliver to the Trustee prior to or on the 30th day after the date of the Company Notice:

(1) written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be purchased (and, if any Security is to be purchased in part, the serial number thereof, the portion of the principal amount thereof to be purchased) and a statement that an election to exercise the Purchase Right is being made thereby, and

(2) the Securities with respect to which the Purchase Right is being exercised.

Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the Purchase Right is being exercised shall continue until the close of business on the Business Day immediately preceding the Purchase Date.

(c) In the event a Purchase Right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee the Purchase Price in cash for payment to the Holder on the Purchase Date as promptly after the Purchase Date as practicable, together with accrued and unpaid interest to the Purchase Date payable in cash with respect to the Securities as to which the Purchase Right has been exercised; *provided, however*, that installments of interest that mature prior to or on the Purchase Date shall be payable in cash to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date.

(d) If any Security (or portion thereof) surrendered for purchase shall not be so paid on the Purchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Purchase Date at the Interest Rate, and each Security shall remain convertible into Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

(e) Any Security which is to be purchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and

the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unpurchased portion of the principal of the Security so surrendered.

(f) All Securities delivered for purchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 2.15 hereof.

ARTICLE 12

CONVERSION OF SECURITIES

SECTION 12.1. Conversion Right and Conversion Price. (a) Subject to and upon: (i) compliance with the provisions of this Article and (ii) the occurrence of one or more of the conditions set forth in paragraph 7 of the Securities, at the option of the Holder thereof, any Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple of \$1,000 may be converted at the principal amount thereof, or of such portion thereof, into the number of duly authorized, fully paid and nonassessable shares of Common Stock obtained by dividing the aggregate principal amount of such Security (or portion thereof) surrendered for conversion by the Conversion Price, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on February 15, 2024.

(b) In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or the portion so called, shall expire at the close of business on the Business Day immediately preceding the Redemption Date, unless the Company defaults in making the payment due upon redemption. In the case of a Fundamental Change for which the Holder exercises its Purchase Right or Put Purchase Right with respect to a Security or portion thereof, such conversion right in respect of the Security or portion thereof shall expire at the close of business on the Business Day preceding the Purchase Date or Put Purchase Date, as applicable.

(c) The price at which shares of Common Stock shall be delivered upon conversion (the "Conversion Price") shall be initially equal to \$39.50 per share of Common Stock. The Conversion Price shall be adjusted in certain instances as provided in paragraphs (a), (b), (c), (d), (e), (f), (h) and (l) of Section 12.4 hereof.

SECTION 12.2. Exercise of Conversion Right. To exercise the conversion right, the Holder of any Security to be converted shall surrender such Security duly endorsed or assigned to the Company or in blank, at the office of any Conversion Agent, accompanied by a duly signed conversion notice substantially in the form attached to the Security to the Company stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted.

Any Holder which surrenders any Security for conversion during the period between the close of business on any Regular Record Date and ending with the opening of business on the corresponding Interest Payment Date (except in the case of any Security whose Maturity is prior to such Interest Payment Date) shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest (including Liquidated Damages, if any) to be received on such Interest Payment Date on the principal amount of the Security being surrendered for conversion (but excluding any overdue interest on the principal amount of such Security so converted that exists at the time such Holder surrenders such Security for conversion). Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security (a) which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.4 hereof on a Redemption Date after such Regular Record Date and on or prior to the next succeeding Interest Payment Date or (b) with respect to which the Company has specified a Purchase Date that is after such Regular Record Date and on or prior to the next succeeding Interest Payment Date, in either case, need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) in the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights

of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. Except as provided above in this Section 12.2, no adjustment shall be made for interest and Liquidated Damages, if any, accrued on any Security converted or for dividends on any shares issued upon the conversion of such Security as provided in this Article 12. As promptly as practicable on or after the conversion date, the Company shall cause to be issued and delivered to such Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share as provided in Section 12.3 hereof.

In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations in aggregate principal amount equal to the unconverted portion of the principal amount of such Securities.

If shares of Common Stock to be issued upon conversion of a Restricted Security, or Securities to be issued upon conversion of a Restricted Security in part only, are to be registered in a name other than that of the Holder of such Restricted Security, such Holder must deliver to the Conversion Agent a certificate in substantially the form set forth in the form of Security set forth in Exhibit A annexed hereto, dated the date of surrender of such Restricted Security and signed by such Holder, as to compliance with the restrictions on transfer applicable to such Restricted Security. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the Holder shares of Common Stock or Securities issued upon conversion of any such Restricted Security not so accompanied by a properly completed certificate.

The Company hereby initially appoints the Trustee as the Conversion Agent.

SECTION 12.3. Fractions of Shares. No fractional shares of Common Stock shall be issued upon conversion of any Security or Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the Quoted Price of the Common Stock as of the Trading Day preceding the date of conversion.

SECTION 12.4. Adjustment of Conversion Price. The Conversion Price shall be subject to adjustments, calculated by the Company, from time to time as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date (as defined in Section 12.4(g)) fixed for such determination, and

(ii) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Such reduction shall become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 12.4(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall issue rights or warrants (other than any rights or warrants referred to in Section 12.4(d)) to all holders of its outstanding shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a conversion price per share) less than the Current Market Price (as defined in Section 12.4(g)) on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered) would purchase at such Current Market Price, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible).

Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock (or securities convertible into Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. Notwithstanding the foregoing, after a period of 60 days from the date of issuance of such rights or warrants, the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered during such period. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Directors.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 12.4(a) applies) or evidences of its indebtedness, cash or other assets, including securities, but excluding (1) any rights or warrants referred to in Section 12.4(c), (2) any stock, securities or other property or assets (including cash) distributed in connection with a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 12.11 hereof applies and (3) dividends and distributions paid exclusively in cash (the securities described in foregoing

clauses (1), (2) and (3) hereinafter in this Section 12.4(d) called the “securities”), then, in each such case, subject to the second succeeding paragraph of this Section 12.4(d), the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date (as defined in Section 12.4(g)) with respect to such distribution by a fraction:

(i) the numerator of which shall be the Current Market Price (determined as provided in Section 12.4(g)) on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) on such date of the portion of the shares of capital stock, evidences of indebtedness, cash or other assets, including securities, so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of the Common Stock outstanding on the Record Date), and

(ii) the denominator of which shall be such Current Market Price on such date.

Such reduction shall become effective immediately prior to the opening of business on the day following the Record Date. However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security (or any portion thereof) the amount of shares of capital stock, evidences of indebtedness, cash or other assets, including securities, such Holder would have received had such Holder converted such Security (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 12.4(d) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the “Reference Period”) used in computing the Current Market Price pursuant to Section 12.4(g) to the extent possible, unless the Board of Directors in a Board Resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holder.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company’s capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (“Trigger Event”):

(i) are deemed to be transferred with such shares of Common Stock,

(ii) are not exercisable, and

(iii) are also issued in respect of future issuances of Common Stock

shall be deemed not to have been distributed for purposes of this Section 12.4(d) (and no adjustment to the Conversion Price under this Section 12.4(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Price under this Section 12.4(d):

(1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrant (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and

(2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 12.4(d) and Sections 12.4(a), 12.4(b) and 12.4(c), any dividend or distribution to which this Section 12.4(d) is applicable that also includes shares of Common Stock, a subdivision or combination of Common Stock to which Section 12.4(b) applies, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 12.4(c) applies (or any combination thereof), shall be deemed instead to be:

(1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Sections 12.4(a), 12.4(b) and 12.4(c) apply, respectively (and any Conversion Price reduction required by this Section 12.4(d) with respect to such dividend or distribution shall then be made), immediately followed by

(2) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion Price reduction required by Sections 12.4(a), 12.4(b) and 12.4(c) with respect to such dividend or distribution shall then be made), except:

(A) the Record Date of such dividend or distribution shall be substituted as (x) "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determination" and "Record Date" within the meaning of Section 12.4(a), (y) "the day upon which such subdivision becomes effective" and "the day upon which such combination becomes effective" within the meaning of Section 12.4(b), and (z) "the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants," such "Record Date," "the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants" and "such dated fixed for the determination of stockholders entitled to receive such rights or warrants" within the meaning of Section 12.4(c), and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the Record Date fixed for such determination" within the meaning of Section 12.4(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 12.11 hereof applies or as part of a distribution referred to in Section 12.4(d) hereof), then and in each such case, immediately after the close of business on the Record Date with respect to such distribution, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction:

(i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the aggregate amount of the cash distribution and (y) the number of shares of Common Stock outstanding on the Record Date, and

(ii) the denominator of which shall be equal to the Current Market Price on such date.

In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any of its subsidiaries for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) that combined together with the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the expiration of the other tender or exchange offer referred to below, of consideration payable in respect of any other tender or exchange offers by the Company or any of its subsidiaries for all or any portion of the Common Stock expiring within the preceding 12 months and in respect of which no adjustment pursuant to this Section 12.4(f) has been made, exceeds 10% of the product of the Current Market Price (determined as provided in Section 12.4(g)) as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender or exchange offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction:

(i) the numerator of which shall be (x) the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time minus (y) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares"), and

(ii) the denominator shall be the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time.

Such reduction (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender or exchange offer had not been made. If the application of this Section 12.4(f) to any tender or exchange offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender or exchange offer under this Section 12.4(f).

(g) For purposes of this Section 12.4, the following terms shall have the meanings indicated:

(1) “Current Market Price” shall mean the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; *provided, however*, that if:

(i) the “ex” date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs during such ten consecutive Trading Days, the Closing Price for each Trading Day prior to the “ex” date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event;

(ii) the “ex” date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs on or after the “ex” date for the issuance or distribution requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the “ex” date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event; and

(iii) the “ex” date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (i) or (ii) of this proviso, the Closing Price for each Trading Day on or after such “ex” date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 12.4(d) or (f), whose determination shall be conclusive and set forth in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such “ex” date.

For purposes of any computation under Section 12.4(f), the Current Market Price of the Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of Common Stock for such day and the next two succeeding Trading Days; *provided, however*, that if the “ex” date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the “ex” date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term “ex” date, when used:

(A) with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution;

(B) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and

(C) with respect to any tender or exchange offer, means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 12.4, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 12.4 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(1) “fair market value” shall mean the amount which a willing buyer would pay a willing seller in an arm’s length transaction.

(2) “Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) The Company may make such reductions in the Conversion Price, in addition to those required by Section 12.4(a), (b), (c), (d), (e) or (f), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and the reduction is irrevocable during the period and the Board of Directors determines in good faith that such reduction would be in the best interests of the Company, which determination shall be conclusive and set forth in a Board Resolution. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to the Trustee and each Holder at the address of such Holder as it appears in the Register a notice of the reduction at least 15 days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

(i) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price *provided, however,* that any adjustments which by reason of this Section 12.4(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. Except as otherwise provided in this Article 12, no adjustment need be made for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or that carry the right to purchase any of the foregoing. All calculations under this Article 12 shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(j) In any case in which this Section 12.4 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Security converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 12.3 hereof.

(k) For purposes of this Section 12.4, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not

pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(1) If the distribution date for the rights provided in the Company's rights agreement, if any, occurs prior to the date a Security is converted, the Holder of the Security who converts such Security after the distribution date is not entitled to receive the rights that would otherwise be attached (but for the date of conversion) to the shares of Common Stock received upon such conversion; *provided, however*, that an adjustment shall be made to the Conversion Price pursuant to clause 12.4(b) as if the rights were being distributed to the common stockholders of the Company immediately prior to such conversion. If such an adjustment is made and the rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment shall be made to the Conversion Price, on an equitable basis, to take account of such event.

SECTION 12.5. Notice of Adjustments of Conversion Price. Whenever the Conversion Price is adjusted as herein provided (other than in the case of an adjustment pursuant to the second paragraph of Section 12.4(h) for which the notice required by such paragraph has been provided), the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based. Unless and until a Responsible Officer of the Trustee receives an Officers' Certificate describing an adjustment of the Conversion Price, the Trustee may assume without inquiry that no such adjustment has been made. Promptly after delivery of such Officers' Certificate, the Company shall prepare a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective, and shall mail such notice to each Holder at the address of such Holder as it appears in the Register within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

SECTION 12.6. Notice Prior to Certain Actions. In case at any time after the date hereof:

(1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its capital surplus or its consolidated retained earnings;

(2) the Company shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class (or of securities convertible into shares of capital stock of any class) or of any other rights;

(3) there shall occur any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, a change in par value, a change from par value to no par value or a change from no par value to par value), or any merger, consolidation, statutory share exchange or combination to which the Company is a party and for which approval of any shareholders of the Company is required, or the sale, transfer or conveyance of all or substantially all of the assets of the Company; or

(4) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of securities pursuant to Section 9.2 hereof, and shall cause to be provided to the Trustee and all Holders in accordance with Section 14.2 hereof, at least 20 days (or 10 days in any case specified in clause (1) or (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating:

(A) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or

(B) the date on which such reclassification, merger, consolidation, statutory share exchange, combination, sale, transfer, conveyance, dissolution, liquidation or winding up is expected to become effective,

and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, merger, consolidation, statutory share exchange, sale, transfer, dissolution, liquidation or winding up.

Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings or actions described in clauses (1) through (4) of this Section 12.6.

SECTION 12.7. Company to Reserve Common Stock. The Company shall at all times use its best efforts to reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of fully paid and nonassessable Common Stock then issuable upon the conversion of all Outstanding Securities.

SECTION 12.8. Taxes on Conversions. Except as provided in the next sentence, the Company will pay any and all taxes (other than taxes on income) and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. A Holder delivering a Security for conversion shall be liable for and will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 12.9. Covenant as to Common Stock. The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be fully paid and nonassessable and, except as provided in Section 12.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

SECTION 12.10. Cancellation of Converted Securities. All Securities delivered for conversion shall be delivered to the Trustee to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.9.

SECTION 12.11. Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale. If any of following events occur, namely:

(i) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination),

(ii) any merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock or

(iii) any sale, conveyance or lease of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock,

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that each Security shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) which such Holder would have been entitled to receive upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Securities been converted into Common Stock immediately prior to such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise its rights of election,

if any, as to the kind or amount of securities, cash or other property receivable upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance (*provided* that, if the kind or amount of securities, cash or other property receivable upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised (“Non-Electing Share”), then for the purposes of this Section 12.11 the kind and amount of securities, cash or other property receivable upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 12. If, in the case of any such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the Purchase Rights set forth in Article 11 hereof.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive recapitalizations, reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 12.11 applies to any event or occurrence, Section 12.4 hereof shall not apply.

SECTION 12.12. Responsibility of Trustee for Conversion Provisions. The Trustee, subject to the provisions of Section 5.1 hereof, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or intent of any such adjustments when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee, subject to the provisions of Section 5.1 hereof, nor any Conversion Agent shall be accountable with respect to the validity or value (of the kind or amount) of any Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 5.1 hereof, nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or share certificates or other securities or property upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of Section 5.1 hereof, and any Conversion Agent shall not be responsible or liable for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE 13

SUBORDINATION

SECTION 13.1. Securities Subordinated to Senior Debt. The Company covenants and agrees, and each Holder of Securities, by such Holder’s acceptance thereof, likewise covenants and agrees, that the Indebtedness represented by the Securities and the payment of the principal of and interest (including Liquidated Damages, if any) on each and all of the Securities is hereby expressly subordinated and junior, to the extent and in the manner set forth and as set forth in this Section 13.1, in right of payment to the prior payment in full of all Senior Debt.

(a) In the event of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or

receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, the holders of all Senior Debt shall first be entitled to receive payment of the full amount due thereon in respect of all such Senior Debt and all other amounts due or provision shall be made for such amount in cash, or other payments satisfactory to the holders of Senior Debt, before the Holders of any of the Securities are entitled to receive any payment or distribution of any character, whether in cash, securities or other property, on account of the principal of or interest (including Liquidated Damages, if any) on the Securities.

(b) In the event of any acceleration of Maturity of the Securities because of an Event of Default, unless the full amount due in respect of all Senior Debt is paid in cash or other form of payment satisfactory to the holders of Senior Debt, no payment shall be made by the Company with respect to the principal of or interest (including Liquidated Damages, if any) on the Securities or to acquire any of the Securities (including any redemption, conversion or cash purchase pursuant to the exercise of the Purchase Right or the Put Purchase Right), and the Company shall give prompt written notice of such acceleration to such holders of Senior Debt.

(c) In the event of and during the continuance of any default in payment of the principal of or interest on, or other payment obligation in respect of, any Senior Debt, whether by acceleration or otherwise, unless (i) all such payments due in respect of such Senior Debt have been paid in full in cash or other payments satisfactory to the holders of Senior Debt and (ii) at the time of, or immediately after giving effect to, any payment made by the Company with respect to the principal of, or interest (including Liquidated Damages, if any) on the Securities or to acquire any of the Securities (including any redemption, conversion or cash purchase pursuant to the exercise of the Purchase Right or the Put Purchase Right), there does not exist under any Senior Debt or any agreement pursuant to which any Senior Debt has been issued any default which shall not have been cured or waived and which shall have resulted in the full amount of such Senior Debt being declared due and payable, the Company shall not make the payment with respect to the Securities contemplated in clause (ii) above. The Company shall give prompt written notice to the Trustee of any default under any Senior Debt or under any agreement pursuant to which Senior Debt may have been issued.

(d) During the continuance of any event of default with respect to any Designated Senior Debt, as such event of default is defined under any such Designated Senior Debt or in any agreement pursuant to which any Designated Senior Debt has been issued (other than a default in payment of the principal of or interest on, rent or other payment obligation in respect of any Designated Senior Debt), permitting the holder or holders of such Designated Senior Debt to accelerate the maturity thereof (or in the case of any lease, permitting the landlord either to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder), no payment shall be made by the Company, directly or indirectly, with respect to principal of or interest (including Liquidated Damages, if any) on the Securities for 179 days (the "Payment Blockage Period") following notice in writing (a "Payment Blockage Notice") to the Company, from any holder or holders of such Designated Senior Debt or their representative or representatives or the trustee or trustees under any indenture or under which any instrument evidencing any such Designated Senior Debt may have been issued, that such an event of default has occurred and is continuing, unless such event of default has been cured or waived or such Designated Senior Debt has been paid in full in cash or other payment satisfactory to the holders of such Designated Senior Debt.

Notwithstanding the foregoing (but subject to the provisions described above limiting payment on the Securities in certain circumstances), unless the Holders of such Designated Senior Debt or the representative of such Holders shall have accelerated the maturity of such Designated Senior Debt, the Company may resume payments on the Securities after the end of the Payment Blockage Period.

For purposes of this Section 13.1(d), such Payment Blockage Notice shall be deemed to include notice of all other events of default under such indenture or instrument which are continuing at the time of the event of default specified in such Payment Blockage Notice. Not more than one Payment Blockage Notice may be given in any consecutive 365-day period, irrespective of the number of events of default,

with respect to one or more issues of Designated Senior Debt during such period, and no such continuing event of default that existed or was continuing on the date of delivery of any Payment Blockage Notice shall be, or shall be made, the basis for a subsequent Payment Blockage Notice.

(e) In the event that, notwithstanding the foregoing provisions of Sections 13.1(a), 13.1(b), 13.1(c) and 13.1(d), any payment on account of principal or interest (including Liquidated Damages, if any) on the Securities shall be made by or on behalf of the Company and received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment shall be segregated and held in trust):

(i) after the occurrence of an event specified in Section 13.1(a) or 13.1(b), then, unless all Senior Debt is paid in full in cash, or provision shall be made therefor,

(ii) after the happening of an event of default of the type specified in Section 13.1(c) above, then, unless the amount of such Senior Debt then due shall have been paid in full, or provision made therefor or such event of default shall have been cured or waived, or

(iii) after the happening of an event of default of the type specified in Section 13.1(d) above and delivery of a Payment Blockage Notice, then, unless such event of default shall have been cured or waived or the 179-day period specified in Section 13.1(d) shall have expired,

such payment (subject, in each case, to the provisions of Section 13.7 hereof) shall be held in trust for the benefit of, and shall be immediately paid over to, the holders of Designated Senior Debt (unless an event described in Section 13.1(a), (b) or (c) has occurred, in which case the payment shall be held in trust for the benefit of, and shall be immediately paid over to all holders of Senior Debt) or their representative or representatives or the trustee or trustees under any indenture under which any instruments evidencing any of the Designated Senior Debt or Senior Debt, as the case may be, may have been issued, as their interests may appear.

SECTION 13.2. Subrogation. Subject to the payment in full of all Senior Debt to which the Indebtedness evidenced by the Securities is in the circumstances subordinated as provided in Section 13.1 hereof, the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Debt until all amounts owing on the Securities shall be paid in full, and, as between the Company, its creditors other than holders of such Senior Debt, and the Holders of the Securities, no such payment or distribution made to the holders of Senior Debt by virtue of this Article which otherwise would have been made to the holders of the Securities shall be deemed to be a payment by the Company on account of such Senior Debt; *provided, however*, that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of Senior Debt, on the other hand.

SECTION 13.3. Obligation of the Company Is Absolute and Unconditional. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of and interest (including Liquidated Damages, if any) on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt, nor shall anything contained herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

SECTION 13.4. Maturity of or Default on Senior Debt. Upon the maturity of any Senior Debt by lapse of time, acceleration or otherwise, all principal of or interest on, rent or other payment obligations in respect of all such matured Senior Debt shall first be paid in full, or such payment shall have been duly provided for,

before any payment on account of principal or interest (including Liquidated Damages, if any) is made upon the Securities.

SECTION 13.5. Payments on Securities Permitted. Except as expressly provided in this Article, nothing contained in this Article shall affect the obligation of the Company to make, or prevent the Company from making, payments of the principal of or interest (including Liquidated Damages, if any) on the Securities in accordance with the provisions hereof and thereof, or shall prevent the Trustee or any Paying Agent from applying any moneys deposited with it hereunder to the payment of the principal of or interest (including Liquidated Damages, if any) on the Securities.

SECTION 13.6. Effectuation of Subordination by Trustee. Each Holder of Securities, by such Holder's acceptance thereof, authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other Person making any payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, and as to other facts pertinent to the right of such Persons under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Persons pending judicial determination as to the right of such Persons to receive such payment.

SECTION 13.7. Knowledge of Trustee. Notwithstanding the provision of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Debt, of any default in payment of principal of or interest on, rent or other payment obligation in respect of any Senior Debt, or of any facts which would prohibit the making of any payment of moneys to or by the Trustee, or the taking of any other action by the Trustee, unless a Responsible Officer of the Trustee having responsibility for the administration of the trust established by this Indenture shall have received written notice thereof from the Company, any Holder of Securities, any Paying or Conversion Agent of the Company or the holder or representative of any class of Senior Debt, and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such default or facts exist; *provided, however*, that unless on the third Business Day prior to the date upon which by the terms hereof any such moneys may become payable for any purpose the Trustee shall have received the notice provided for in this Section 13.7, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys and apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date.

SECTION 13.8. Trustee's Relation to Senior Debt. The Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Debt at the time held by it, to the same extent as any other holder of Senior Debt and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing contained in this Article shall apply to claims of or payments to the Trustee under or pursuant to Section 5.8 hereof.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to Holders, the Company or any other Person moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article or otherwise.

SECTION 13.9. Rights of Holders of Senior Debt Not Impaired No right of any present or future holder of any Senior Debt to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

SECTION 13.10. Modification of Terms of Senior Debt Any renewal or extension of the time of payment of any Senior Debt or the exercise by the holders of Senior Debt of any of their rights under any instrument creating or evidencing Senior Debt, including without limitation the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee.

No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Debt is outstanding or of such Senior Debt, whether or not such release is in accordance with the provisions or any applicable document, shall in any way alter or affect any of the provisions of this Article or of the Securities relating to the subordination thereof.

SECTION 13.11. Certain Conversions Not Deemed Payment For the purposes of this Article 13 only:

(1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 12 hereof shall not be deemed to constitute a payment or distribution on account of the principal of or interest (including Liquidated Damages, if any) on Securities or on account of the purchase or other acquisition of Securities, and

(2) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 12.3 hereof), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of or interest (including Liquidated Damages, if any) on such Security.

For the purposes of this Section 13.11, the term "junior securities" means:

(a) shares of any common stock of the Company or

(b) other securities of the Company that are subordinated in right of payment to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article.

Nothing contained in this Article 13 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors (other than holders of Senior Debt) and the Holders of Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 12 hereof.

ARTICLE 14

OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 14.1. Trust Indenture Act Controls. This Indenture is subject to the provisions of the TIA which are required to be part of this Indenture, and shall, to the extent applicable, be governed by such provisions.

SECTION 14.2. Notices. Any notice or communication to the Company or the Trustee is duly given if in writing and delivered in person or mailed by first-class mail to the address set forth below:

- (a) if to the Company:
Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: General Counsel

with a copy (which shall not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP
155 Constitution Drive
Menlo Park, California 94025
Attention: Scott Dettmer, Esq.

(b) if to the Trustee:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
LM-CA-T24T
Los Angeles, CA 90071
Attention: Corporate Trust Services (Equinix Convertible Subordinated Debentures due 2024)

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to a Holder shall be mailed by first-class mail to his address shown on the Register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in such notice or communication shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it is duly given as of the date it is mailed, whether or not the addressee receives it, except that notice to the Trustee shall only be effective upon receipt thereof by the Trustee.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee at the same time.

SECTION 14.3. Communication by Holders with Other Holders. Holders may communicate pursuant to Section 312(b) of the TIA with other Holders with respect to their rights under the Securities or this Indenture. The Company, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the TIA.

SECTION 14.4. Acts of Holders of Securities. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by:

- (1) one or more instruments of substantially similar tenor signed by such Holders in person or by agent or proxy duly appointed in writing;
- (2) the record of Holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities duly called and held in accordance with the provisions of Article 8; or
- (3) a combination of such instruments and any such record.

Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Securities signing such instrument or instruments and so voting at such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 5.1 hereof) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 8.6 hereof.

(b) The fact and date of the execution by any Person of any such instrument or writing may be provided in any manner which the Trustee reasonably deems sufficient.

(c) The principal amount and serial numbers of Securities held by any Person, and the date of such Person holding the same, shall be proved by the Register.

(d) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holders of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

SECTION 14.5. Certificate and Opinion as to Conditions Precedent. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the Opinion of Counsel with respect to the matters upon which such certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

SECTION 14.6. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that each individual signing such certificate or opinion on behalf of the Company has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 14.7. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 14.8. Successors and Assigns. All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 14.9. Separability Clause. In case any provision in this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 14.10. Benefits of Indenture. Nothing contained in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Debt and the Holders of Securities, any benefit or legal or equitable right, remedy or claim under this Indenture.

SECTION 14.11. Governing Law. **THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 14.12. Counterparts. This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original but all such counterparts shall together constitute but one and the same instrument.

SECTION 14.13. Legal Holidays. In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert such Security shall not be a Business Day at any Place of Payment or Place of Conversion, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest (including Liquidated Damages, if any) or principal or conversion of the Securities, need not be made at such Place of Payment or Place of Conversion on such day, but may be made on the next succeeding Business Day at such Place of Payment or Place of Conversion with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity or on such last day for conversion; *provided, however*, that in the case that payment is made on such succeeding Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

SECTION 14.14. Recourse Against Others. No recourse for the payment of the principal of or interest (including Liquidated Damages, if any) on any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, shareholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance thereof and as part of the consideration for the issue thereof, expressly waived and released.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

EQUINIX, INC., as Issuer

By: /s/ RENEE F. LANAM

Name: Renée F. Lanam
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: /s/ PAULA OSWALD

Name: Paula Oswald
Title:

FORM OF SECURITY

[FACE OF SECURITY]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (“DTC”) TO EQUINIX, INC. (OR ITS SUCCESSOR) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, CONVERSION OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR OF SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.⁽¹⁾

THIS DEBENTURE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE “SECURITIES ACT”), AND THIS DEBENTURE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS DEBENTURE IS HEREBY NOTIFIED THAT THE SELLER OF THIS DEBENTURE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS DEBENTURE AGREES FOR THE BENEFIT OF EQUINIX, INC. THAT (A) THIS DEBENTURE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (II) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (III) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), OR (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, (B) THE HOLDER WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT AND (C) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS DEBENTURE FROM IT OF THE RESTRICTIONS REFERRED TO IN (A) AND (B) ABOVE.

⁽¹⁾ This legend should be included only if the Security is issued in global form.

EQUINIX, INC.
2.50% Convertible Subordinated Debenture due 2024

CUSIP NO. _____

No. _____

\$ _____

EQUINIX, INC., a Delaware corporation (the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or its registered assigns, the principal sum of U.S. Dollars (\$ _____) on February 15, 2024.

Interest Payment Dates: February 15 and August 15, commencing August 15, 2004.

Regular Record Dates: February 1 and August 1.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, the Company has caused this Security to be duly executed manually or by facsimile by its duly authorized officers.

Dated: February 11, 2004

EQUINIX, INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Trustee's Certificate of Authentication

This is one of the 2.50% Convertible Subordinated Debentures due 2024 described in the within-named Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Authorized Signatory

Dated: February 11, 2004

[REVERSE OF SECURITY]

EQUINIX, INC.

2.50% Convertible Subordinated Debenture due 2024

Capitalized terms used herein but not defined shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. **Principal and Interest.** Equinix, Inc., a Delaware corporation (the "Company"), promises to pay interest on the principal amount of this Security at the Interest Rate from the date of issuance until repayment at Maturity, redemption or purchase. The Company shall pay interest on this Security semiannually in arrears on February 15 and August 15 of each year (each an "Interest Payment Date"), commencing August 15, 2004.

Interest on this Security shall be computed on the basis of a 360-day year of twelve 30-day months and for any period shorter than a full semiannual period for which interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month.

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest on such Security on the corresponding Interest Payment Date. A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be entitled to receive interest (including Liquidated Damages, if any) on the principal amount of such Security, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during the period between the close of business on such Regular Record Date and ending with the opening of business on the corresponding Interest Payment Date shall be required to pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted (but excluding any overdue interest on the principal amount of such Security so converted that exists at the time such Holder surrenders such Security for conversion), which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security (a) which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.4 of the Indenture on a Redemption Date after such Regular Record Date and on or prior to the next succeeding Interest Payment Date or (b) with respect to which the Company has specified a Purchase Date that is after such Regular Record Date and on or prior to the next succeeding Interest Payment Date, in either case, shall be entitled to receive (and retain) such interest (including Liquidated Damages, if any) and need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

In accordance with the terms of the Registration Rights Agreement, during the first 90 days following a Registration Default (as defined in the Registration Rights Agreement), the Interest Rate borne by this Security shall be increased by 0.25% on:

(A) June 11, 2004, if the shelf registration statement (the "Shelf Registration Statement") is not filed prior to or on June 10, 2004;

(B) September 9, 2004, if the Shelf Registration Statement is not declared effective by the Securities and Exchange Commission prior to or on September 8, 2004;

(C) the day after the fifth Business Day after the Shelf Registration Statement previously declared effective ceases to be effective or fails to be usable, if a post-effective amendment (or report filed pursuant to the Exchange Act) that cures the Shelf Registration Statement is not filed with the Securities and Exchange Commission during such five Business Day period; or

(D) the day following the 45th, 60th or 90th day, as the case may be, of any period that the prospectus contained in the Shelf Registration Statement has been suspended, if such suspension has not been terminated.

From and after the 91st day following such Registration Default, the Interest Rate borne by this Security shall be increased by 0.50%. In no event shall the Interest Rate borne by this Security be increased by more than 0.50%.

Any amount of additional interest shall be payable in cash semiannually, in arrears, on each Interest Payment Date and shall cease to accrue on the date the Registration Default is cured. The Holder of this Security is entitled to the benefits of the Registration Rights Agreement.

2. Method of Payment. Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Principal of and interest on, Global Securities shall be payable to the Depository in immediately available funds.

Principal of Physical Securities shall be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities shall be payable by (i) U.S. Dollar check drawn on a bank located in the city where the Corporate Trust Office of the Trustee is located mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount of Securities in excess of \$5,000,000, wire transfer in immediately available funds.

3. Paying Agent and Registrar. Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without notice to any Holder.

4. Indenture. The Company issued this Security under an Indenture, dated as of February 11, 2004 (the "indenture"), between the Company and U.S. Bank National Association, as trustee (the "Trustee"). The terms of this Security include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("TIA"). This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control.

5. Optional Redemption. This Security is not redeemable prior to February 15, 2009. This Security may be redeemed in whole or in part, upon not less than 20 nor more than 60 days' notice, at any time on or after February 15, 2009, at the option of the Company, at a redemption price equal to 100% of the principal amount of the Securities plus any interest accrued but not paid prior to the Redemption Date.

If fewer than all the Securities are to be redeemed, the Trustee shall select the particular Securities to be redeemed from the Outstanding Securities by the methods as provided in the Indenture. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (*provided, however*, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

On and after the Redemption Date, interest shall cease to accrue on Securities or portions of Securities called for redemption, unless the Company defaults in the payment of the Optional Redemption Price and accrued and unpaid interest.

Notice of redemption shall be given by the Company to the Holders as provided in the Indenture.

6. Purchase Rights.

(a) Purchase Right Upon a Fundamental Change. If a Fundamental Change occurs, the Holder of Securities, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to purchase the Securities (or any portion of the principal amount hereof that is at least \$1,000 or an integral multiple thereof; *provided, however*, that the portion of the principal amount of this Security to be Outstanding after such purchase is at least equal to \$1,000) at a purchase price equal to 100% of the principal amount of the Securities to be purchased (the "Purchase Price"), plus interest accrued and unpaid to, but excluding, the Purchase Date.

A Company Notice shall be given by the Company to the Holders as provided in the Indenture. To exercise a Purchase Right, a Holder must deliver to the Trustee a written notice as provided in the Indenture.

(b) Purchase by the Company at the Option of the Holder. Subject to the terms and conditions of the Indenture, each Holder shall have the right to require the Company to purchase all or a portion of their Securities on February 15, 2009, February 15, 2014 and February 15, 2019 (or, if any such date is not a Business Day, on the immediately succeeding Business Day) (each, a "Put Purchase Date"), at 100% of the principal amount of the Securities to be so purchased, plus accrued and unpaid interest, if any, to, but excluding, such Put Purchase Date (the "Put Purchase Price"). On or before the twenty-third (23rd) Business Day prior to each Put Purchase Date, the Company shall provide to the Trustee, the Paying Agent and to all Holders at their respective addresses as shown on the Register, and to beneficial owners of the Securities where required by applicable law, a notice as provided in the Indenture. The Company will be required to purchase only Securities with respect to which a Holder has delivered a Purchase Notice in accordance with the terms and conditions of the Indenture and subject to the satisfaction of the other conditions set forth in the Indenture.

7. Conversion Rights. (a) Subject to and upon compliance with the provisions of the Indenture and the occurrence of one or more of the conditions set forth in clause (d) of this paragraph 7, the Holder of Securities shall be entitled, at such Holder's option, at any time before the close of business on February 15, 2024, to convert the Holder's Securities (or any portion of the principal amount hereof which is \$1,000 or an integral multiple thereof), at the principal amount thereof or of such portion thereof, into duly authorized, fully paid and nonassessable shares of Common Stock of the Company at the Conversion Price in effect at the time of conversion.

(b) In the case of a Security (or a portion thereof) called for redemption, such conversion right in respect of the Security (or such portion thereof) so called shall expire at the close of business on the Business Day immediately preceding the Redemption Date, unless the Company defaults in making the payment due upon redemption. In the case of a Fundamental Change for which the Holder exercises its Purchase Right or Put Purchase Right with respect to a Security (or a portion thereof), such conversion right in respect of the Security (or portion thereof) shall expire at the close of business on the Business Day preceding the Purchase Date or Put Purchase Date, as applicable.

(c) The Conversion Price shall be initially equal to \$39.50 per share of Common Stock. The Conversion Price shall be adjusted under certain circumstances as provided in the Indenture.

(d) Holders may surrender their Securities for conversion into shares of the Company's Common Stock prior to Stated Maturity in only the following circumstances:

(i) Conversion Upon Satisfaction of Sale Price Condition

(A) A Holder may surrender any of its Securities for conversion into shares of the Company's Common Stock in any calendar quarter (and only during such calendar quarter) after the quarter ending June 30, 2004 if the sale price of the Company's Common Stock, for at least 20 Trading Days during the period of 30 consecutive Trading Days ending on the last Trading Day of

the previous calendar quarter, is greater than or equal to 120% of the applicable conversion price per share of the Company's Common Stock on such last Trading Day.

(B) The "sale price" of the Company's Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and asked prices or, if more than one in either case, the average of the average bid and the average asked prices) on that date as reported in transactions for the principal U.S. securities exchange on which the Company's Common Stock is traded or, if the Company's Common Stock is not listed on a U.S. national or regional securities exchange, as reported by the Nasdaq National Market. The sale price shall be determined without reference to after-hours or extended market trading. If the Company's Common Stock is not listed for trading on a U.S. national or regional securities exchange and not reported by the Nasdaq National Market on the relevant date, the "sale price" shall be the last quoted bid price for the Company's Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Company's Common Stock is not so quoted, the "sale price" shall be the average of the mid-point of the last bid and asked prices for the Company's Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

(ii) Conversion Upon Satisfaction of Trading Price Condition.

(A) A Holder may surrender its Securities for conversion into the Company's Common Stock during the five Business Days immediately following any five consecutive Trading-Day period in which the Trading Price per \$1,000 principal amount of Securities (as determined following a request by a Holder of the Securities in accordance with the procedures described below) for each day of that period was less than 98% of the product of the sale price of the Company's Common Stock and the then applicable conversion rate (the "98% Trading Exception"); *provided, however*, that if, on the date of any conversion of the Securities pursuant to the 98% Trading Exception that is on or after February 15, 2019, the sale price of the Company's Common Stock is greater than the applicable Conversion Price for the Securities, then the Holder shall receive upon conversion of the Securities, in lieu of Common Stock based on the then applicable conversion rate for the Holder's Securities, cash, Common Stock or a combination of cash and Common Stock, at the Company's option, with a value equal to the principal amount of the Holder's Security plus accrued and unpaid interest, if any, as of the conversion date, which is referred to as a "principal value conversion".

(B) In connection with any conversion upon satisfaction of the condition set forth in clause (A) above, the Trustee shall have no obligation to determine the Trading Price of the Securities unless the Company has requested such determination, and the Company shall have no obligation to make such request unless the Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Securities would be less than 98% of the product of the sale price of the Company's Common Stock and the then applicable conversion rate; at which time the Company shall instruct the Trustee to determine the Trading Price of the Securities beginning on the next Trading Day and on each successive Trading Day until the trading price is greater than or equal to 98% of the product of the sale price of the Company's Common Stock and the then applicable conversion rate.

(iii) Conversion Upon Notice of Redemption. If the Company calls any or all of the Securities for redemption pursuant to the provisions of Article 10 of the Indenture, Holders may convert Securities into the Company's Common Stock at any time prior to the close of business on the Business Day immediately preceding the Redemption Date, even if the Securities are not otherwise convertible at such time. If a Holder already has delivered a purchase notice with respect to a Security, however, the Holder may not surrender that Security for conversion until the Holder has withdrawn the purchase notice in accordance with this Indenture.

(iv) Conversion Upon Specified Corporate Transactions

(A) If the Company elects to: (1) distribute to all holders of the Company's Common Stock rights entitling them to purchase, for a period expiring within 60 days after the date of the distribution, shares of the Company's Common Stock at less than the sale price of a share of the Company's Common Stock on the Trading Day immediately preceding the declaration date of the distribution, or (2) distribute to all holders of the Company's Common Stock the Company's assets, debt securities or rights to purchase the Company's securities, which distribution has a per share value as determined by the Company's board of directors exceeding 10% of the sale price of a share of the Company's Common Stock on the Trading Day immediately preceding the declaration date of the distribution, the Company must notify the Holders of the Securities at least 20 days prior to the ex-dividend date for such distribution. Upon such notice, Holders may surrender their Securities for conversion at any time until the earlier of the close of business on the Business Day immediately prior to the ex-dividend date or the Company's announcement that such distribution will not take place, even if the Securities are not otherwise convertible at such time. No Holder may exercise this right to convert if the Holder otherwise may participate in the distribution without conversion. The ex-dividend date is the first date upon which a sale of the Common Stock does not automatically transfer the right to receive the relevant distribution from the seller of the Common Stock to its buyer.

(B) If the Company is a party to a consolidation, merger or binding share exchange pursuant to which the Company's Common Stock would be converted into cash or property other than securities, a Holder may surrender Securities for conversion at any time from and after the date that is 15 days prior to the anticipated effective date of the transaction until 15 days after the actual effective date of such transaction. If the Company engages in a reclassification of the Company's Common Stock or is a party to a consolidation, merger, binding share exchange or transfer of all or substantially all of the Company's assets pursuant to which the Company's Common Stock is converted into cash, securities or other property, then at the effective time of the transaction, the right to convert a Security into the Company's Common Stock shall be changed into a right to convert a Security into the kind and amount of cash, securities or other property that the Holder would have received if the Holder had converted its Securities immediately prior to the applicable record date for such transaction. If the transaction also constitutes a Fundamental Change, a Holder may require the Company to purchase all or a portion of its Securities as set forth in Article 11 of the Indenture.

(c) To exercise the conversion right, the Holder must surrender the Security (or portion thereof) duly endorsed or assigned to the Company or in blank, at the office of the Conversion Agent, accompanied by a duly signed conversion notice to the Company. Any Security surrendered for conversion during the period between the close of business on any Regular Record Date and the opening of business on the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest (including Liquidated Damages, if any) payable on such Interest Payment Date by the Company on the principal amount of the Security being surrendered for conversion (but excluding any overdue interest on the principal amount of such Security so converted that exists at the time such Holder surrenders such Security for conversion). Notwithstanding the foregoing, any such Holder which surrenders for conversion any Security (a) which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.4 of the Indenture on a Redemption Date after such Regular Record Date and on or prior to the next succeeding Interest Payment Date or (b) with respect to which the Company has specified a Purchase Date that is after such Regular Record Date and on or prior to the next succeeding Interest Payment Date, in either case, need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

(f) No fractional shares of Common Stock shall be issued upon conversion of any Securities. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

8. Subordination. The Indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, subordinated and subject in right of payment to the prior payment in full of all amounts then due on all Senior Debt of the Company. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

9. Denominations; Transfer; Exchange. The Securities are issuable in registered form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. A Holder may register the transfer or exchange of Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture.

In the event of a redemption in part, the Company shall not be required (a) to register the transfer of, or exchange, Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption, or (b) to register the transfer of, or exchange, any such Securities, or portion thereof, called for redemption.

In the event of redemption, conversion or purchase of the Securities in part only, a new Security or Securities for the unredeemed, unconverted or unpurchased portion thereof shall be issued in the name of the Holder hereof.

10. Persons Deemed Owners. The registered Holder of this Security shall be treated as its owner for all purposes.

11. Unclaimed Money. The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

12. Discharge Prior to Redemption or Maturity. Subject to certain conditions contained in the Indenture, the Company may discharge its obligations under the Securities and the Indenture if (1) (a) all of the Outstanding Securities have become due and payable or shall become due and payable at their scheduled Maturity within one year or (b) all of the Outstanding Securities are scheduled for redemption within one year, and (2) the Company shall have deposited with the Trustee an amount in cash sufficient to pay the principal of and interest on, all of the Outstanding Securities on the date of Maturity or redemption, as the case may be.

13. Amendment; Supplement; Waiver. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of the Indenture). The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or such other Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (including Liquidated Damages, if any) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security (or pay cash in lieu of conversion) as provided in the Indenture.

14. Defaults and Remedies. The Indenture provides that an Event of Default with respect to the Securities occurs when any of the following occurs:

- (a) the Company defaults in the payment of the principal on any of the Securities when it becomes due and payable, at Maturity, upon redemption or exercise of a Purchase Right or Put Purchase Right or otherwise, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture; or
- (b) the Company defaults in the payment of interest on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture; or
- (c) the Company fails to deliver shares of Common Stock, together with cash instead of fractional shares, when those shares of Common Stock or cash instead of fractional shares is required to be delivered following conversion of a Security in accordance with the provisions of Article 12 of the Indenture; or
- (d) the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or the Indenture and such default continues for a period of 60 days after written notice of such failure is given as specified in the Indenture; or
- (e) (i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000, or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either clause (i) or (ii) above, for a period of 30 days after written notice is given to the Company as specified in the Indenture; or
- (f) within 30 days after the occurrence of a Fundamental Change, the Company fails to give to each Holder of Securities notice of the occurrence of such Fundamental Change and the resulting Purchase Right of such Holder; or
- (f) there are certain events of bankruptcy, insolvency or reorganization of the Company.

If an Event of Default shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

15. Authentication. This Security shall not be valid until the Trustee (or authenticating agent) executes the certificate of authentication on the other side of this Security.

16. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/G/M/A (= Uniform Gifts to Minors Act).

17. Additional Rights of Holders of Transfer Restricted Securities. In addition to the rights provided to Holders under the Indenture, Holders of Transfer Restricted Securities shall have all the rights set forth in the Registration Rights Agreement.

18. CUSIP Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on this Security and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on this Security or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

19. Governing Law. The Indenture and this Security shall be governed by, and construed in accordance with, the law of the State of New York.

20. Successor Corporation. In the event a successor corporation assumes all the obligations of the Company under this Security, pursuant to the terms hereof and of the Indenture, the Company shall be released from all such obligations.

ASSIGNMENT FORM

To assign this Security, fill in the form below and have your signature guaranteed: (I) or (we) assign and transfer this Security to:

(Insert assignee's soc. sec. or tax I.D. no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Dated:

Your Name:

(Print your name exactly as it appears on the face of this Security)

Your Signature:

(Sign exactly as your name appears on the face of this Security)

Signature Guarantee*:

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

In connection with any transfer of this Security occurring prior to the end of the period referred to in Rule 144(k) under the Securities Act, the undersigned confirms that without utilizing any general solicitation or general advertising:

[Check One]

(a) this Security is being transferred in compliance with the exemption from registration under the Securities Act of 1933, as amended, provided by Rule 144A thereunder.

or

(b) this Security is being transferred in compliance with the exemption from registration under the Securities Act of 1933, as amended, provided by Regulation S thereunder.

or

(c) this Security is being transferred other than in accordance with (a) or (b) above and documents are being furnished which comply with the conditions of transfer set forth in this Security and the Indenture.

If none of the foregoing boxes is checked, the Trustee or other Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless the conditions to any such transfer of registration set forth herein and in Sections 2.7, 2.8 and 2.9 of the Indenture shall have been satisfied.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

Signature Guarantee:

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee.

TO BE COMPLETED BY PURCHASER IF (a) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion, in each case for investment and not with a view to distribution, and that it and any such account is a "Qualified Institutional Buyer" within the meaning of Rule 144A under the Securities Act of 1933 and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

TO BE COMPLETED BY PURCHASER IF (b) ABOVE IS CHECKED.

The undersigned represents and warrants that the transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the undersigned further certifies that (A) the transfer is not being made to a person in the United States and (1) at the time the buy order was originated, the transferee was outside the United States or such transferor and any Person acting on its behalf reasonably believed and believes that the transferee was outside the United States or (2) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States; (B) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act; (C) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and (D) if the proposed transfer is not being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person.

Dated:

NOTICE: To be executed by an executive officer

CONVERSION NOTICE

TO: EQUINIX, INC.

301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: General Counsel

The undersigned registered owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion hereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of this Security not converted is to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest (including Liquidated Damages, if any) accompanies this Security.

Dated:

Your Name:

(Print your name exactly as it appears on the face of this Security)

Your Signature:

(Sign exactly as your name appears on the face of this Security)

Signature Guarantee*:

Social Security or other Taxpayer
Identification Number:

Principal amount to be converted (if less than all): \$ _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Fill in for registration of shares (if to be issued) and Securities (if to be delivered) other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

NOTICE OF EXERCISE OF PURCHASE RIGHT

TO: EQUINIX, INC.

301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: General Counsel

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from Equinix, Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Security, or the portion thereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security, together with interest (including Liquidated Damages, if any) accrued and unpaid to, but excluding, such date, to the registered holder hereof, in cash.

Dated:

Your Name:

(Print your name exactly as it appears on the face of this Security)

Your Signature:

(Sign exactly as your name appears on the face of this Security)

Signature Guarantee*:

Social Security or other Taxpayer
Identification Number:

Principal amount to be repaid (if less than all): \$ _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES FOR PHYSICAL SECURITIES(2)

The following exchanges of a part of this Global Security for Physical Securities have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Security</u>	<u>Amount of increase in Principal Amount of this Global Security</u>	<u>Principal Amount of this Global Security following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee</u>
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(2) This schedule should be included only if the Security is issued in global form.

REGISTRATION RIGHTS AGREEMENT

between

EQUINIX, INC.,

and

CITIGROUP GLOBAL MARKETS INC.,
as representative of the initial
purchasers named in Schedule I hereto

Dated February 11, 2004

Registration Rights Agreement (this "Agreement"), dated as of February 11, 2004, between Equinix, Inc., a Delaware corporation (the "Issuer") and Citigroup Global Markets Inc., as representative (the "Representative") of the initial purchasers (the "Initial Purchasers") named in Schedule I hereto.

Pursuant to the Purchase Agreement, dated February 5, 2004, between the Issuer and the Initial Purchasers (the "Purchase Agreement"), the Initial Purchasers have agreed to purchase from the Issuer up to \$75,000,000 (\$86,250,000 if the Initial Purchasers' option is exercised in full) in aggregate principal amount of 2.50% Convertible Subordinated Debentures due 2024 (the "Debentures"). The Debentures will be convertible into fully paid, nonassessable shares of common stock, par value \$0.001 per share, of the Issuer (the "Common Stock") on the terms, and subject to the conditions, set forth in the Indenture (as defined herein). To induce the Initial Purchasers to purchase the Debentures, the Issuer has agreed to provide the registration rights set forth in this Agreement pursuant to the Purchase Agreement.

The parties hereby agree as follows:

1. Definitions. As used in this Agreement, the following capitalized terms shall have the following meanings:

Advice: As defined in Section 4(c)(ii) hereof.

Agreement: As defined in the preamble hereto.

Business Day: A day other than a Saturday or Sunday or any federal holiday in the United States.

Commission: Securities and Exchange Commission.

Common Stock: As defined in the preamble hereto.

Damages Payment Date: Each Interest Payment Date. For purposes of this Agreement, if no Debentures are outstanding, "Damages Payment Date" shall mean each February 15 and August 15.

Debentures: As defined in the preamble hereto.

Effectiveness Period: As defined in Section 2(a)(iii) hereof.

Effectiveness Target Date: As defined in Section 2(a)(ii) hereof.

Exchange Act: Securities Exchange Act of 1934, as amended.

Holder: A Person who owns, beneficially or otherwise, Transfer Restricted Securities.

Indenture: The Indenture, dated as of February 11, 2004, between the Issuer and U.S. Bank National Association, as trustee, pursuant to which the Debentures are to be issued, as such Indenture is amended, modified or supplemented from time to time in accordance with the terms thereof.

Initial Purchasers: As defined in the preamble hereto.

Interest Payment Date: As defined in the Indenture.

Issuer: As defined in the preamble hereto.

Liquidated Damages: As defined in Section 3(a) hereof.

Majority of Holders: Holders holding over 50% of the aggregate principal amount of Debentures outstanding; provided, however, that, for purpose of this definition, a holder of shares of Common Stock which constitute Transfer Restricted Securities and were issued upon conversion of the Debentures shall be deemed to hold an aggregate principal amount of Debentures (in addition to the aggregate principal amount of Debentures held by such holder) equal to the aggregate principal amount of Debentures converted by such Holder into such shares of Common Stock.

NASD: National Association of Securities Dealers, Inc.

Offering Memorandum: The Offering Memorandum dated February 5, 2004 relating to the Debentures

Person: An individual, partnership, corporation, unincorporated organization, trust, joint venture or a government or agency or political subdivision thereof.

Prospectus: The prospectus included in a Shelf Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto,

including post-effective amendments, and all material incorporated by reference into such Prospectus.

Purchase Agreement: As defined in the preamble hereto.

Questionnaire Deadline: As defined in Section 2(b) hereof.

Record Holder: With respect to any Damages Payment Date, each Person who is a Holder on the record date with respect to the Interest Payment Date on which such Damages Payment Date shall occur. In the case of a Holder of shares of Common Stock issued upon conversion of the Debentures, "Record Holder" shall mean each Person who is a Holder of shares of Common Stock which constitute Transfer Restricted Securities on the February 1 or August 1 immediately preceding the Damages Payment Date.

Registration Default: As defined in Section 3(a) hereof.

Securities Act: Securities Act of 1933, as amended.

Shelf Filing Deadline: As defined in Section 2(a)(i) hereof.

Shelf Registration Statement: As defined in Section 2(a)(i) hereof.

Suspension Period: As defined in Section 4(b)(i) hereof.

TIA: Trust Indenture Act of 1939, as in effect on the date the Indenture is qualified under the TIA.

Transfer Restricted Securities: Each Debenture and each share of Common Stock issued upon conversion of Debentures until the earlier of:

- (i) the date on which such Debenture or such share of Common Stock issued upon conversion has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement;
- (ii) the date on which such Debenture or such share of Common Stock issued upon conversion is transferred in compliance with Rule 144 under the Securities Act or may be sold or transferred pursuant to Rule 144(k) under the Securities Act (or any other similar provision then in force); or
- (iii) the date on which such Debenture or such share of Common Stock issued upon conversion ceases to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise).

Underwritten Registration or Underwritten Offering: A registration in which securities of the Issuer are sold to an underwriter for reoffering to the public.

2. Shelf Registration.

(a) The Issuer shall:

(i) not later than 120 days after the date hereof (the "Shelf Filing Deadline"), use its commercially reasonable best efforts to cause to be filed a registration statement pursuant to Rule 415 under the Securities Act (the "Shelf Registration Statement"), which Shelf Registration Statement shall provide for resales of all Transfer Restricted Securities held by Holders that have provided the information required pursuant to the terms of Section 2(b) hereof;

(ii) use its commercially reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the Commission as promptly as practicable, but in no event later than 210 days after the date hereof (the "Effectiveness Target Date"); and

(iii) use its commercially reasonable best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 4(b) hereof to the extent necessary to ensure that (A) it is available for resales by the Holders of Transfer Restricted Securities entitled to the benefit of this Agreement and (B) conforms with the requirements of this Agreement and the Securities Act and the rules and regulations of the Commission promulgated thereunder as announced from time to time for a period (the "Effectiveness Period") of:

(1) two years following the last date of original issuance of Debentures; or

(2) such shorter period that will terminate when (x) all of the Holders of Transfer Restricted Securities are able to sell all Transfer Restricted Securities immediately without restriction pursuant to Rule 144(k) under the Securities Act or any successor rule thereto, (y) when all Transfer Restricted Securities have ceased to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise) or (z) all Transfer Restricted Securities registered under the Shelf Registration Statement have been sold.

(b) No Holder may include any of its Transfer Restricted Securities in the Shelf Registration Statement pursuant to this Agreement unless such Holder furnishes to the Issuer in writing, prior to or on the 20th day after receipt of a request therefor (the "Questionnaire Deadline"), such information as the Issuer may reasonably request, including the information specified in the form of questionnaire attached as Annex A to the Offering Memorandum, for use in connection with the Shelf Registration Statement or the Prospectus or preliminary Prospectus included therein and in any application to be filed with or under state securities laws.

In connection with all such requests for information from Holders in addition to that set forth in Annex A to the Offering Memorandum, the Issuer shall notify such Holders of the requirements set forth in the preceding sentence. No Holder shall be entitled to Liquidated Damages pursuant to Section 3 hereof unless such Holder shall have provided all such requested information prior to or on the Questionnaire Deadline.

3. Liquidated Damages.

(a) If:

(i) the Shelf Registration Statement is not filed with the Commission prior to or on the Shelf Filing Deadline;

(ii) the Shelf Registration Statement has not been declared effective by the Commission prior to or on the Effectiveness Target Date;

(iii) subject to the provisions of Section 4(b)(i) hereof, the Shelf Registration Statement is filed and declared effective but, during the Effectiveness Period, shall thereafter cease to be effective or fail to be usable for its intended purpose without being succeeded within five Business Days by a post-effective amendment to the Shelf Registration Statement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act that cures such failure and, in the case of a post-effective amendment, is itself immediately declared effective; or

(iv) prior to or on the 45th, 60th or 90th day, as the case may be, of any Suspension Period, such suspension has not been terminated

(each such event referred to in foregoing clauses (i) through (iv), a "Registration Default"), the Issuer hereby agrees to pay liquidated damages ("Liquidated Damages") with respect to the Transfer Restricted Securities from and including the day following the Registration Default to but excluding the day on which the Registration Default has been cured:

(A) in respect of the Debentures, to each holder of Debentures, (x) with respect to the first 90-day period during which a Registration Default shall have occurred and be continuing, in an amount per year equal to an additional 0.25% of the principal amount of the Debentures and (y) with respect to the period commencing on the 91st day following the day the Registration Default shall have occurred and be continuing, in an amount per year equal to an additional 0.50% of the principal amount of the Debentures; provided that in no event shall Liquidated Damages accrue at a rate per year exceeding 0.50% of the principal amount of the Debentures; and

(B) In respect of any shares of Common Stock, to each holder of shares of Common Stock issued upon conversion of Debentures, (x) with respect to the first 90-day period in which a Registration Default shall have occurred and be continuing, in an amount per year equal to 0.25% of the principal amount of the converted Debentures and (y) with respect to the period commencing the 91st day following the day the Registration Default shall have occurred and be continuing, in an amount per year equal to 0.50% of the principal amount of the converted Debentures; provided, however, that in no event shall Liquidated Damages accrue at a rate per year exceeding 0.50% of the principal amount of the converted Debentures.

(b) All accrued Liquidated Damages shall be paid in arrears to Record Holders by the Issuer on each Damages Payment Date by wire transfer of immediately available funds or by federal funds check. Following the cure of all Registration Defaults relating to any particular Debenture or share of Common Stock, the accrual of Liquidated Damages with respect to such Debenture or share of Common Stock will cease.

All obligations of the Issuer set forth in this Section 3 that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such Transfer Restricted Security shall have been satisfied in full.

The Liquidated Damages set forth above shall be the exclusive monetary remedy available to the Holders for such Registration Default.

4. Registration Procedures.

(a) In connection with the Shelf Registration Statement, the Issuer shall comply with all the provisions of Section 4(b) hereof and shall use its commercially reasonable best efforts to effect such registration to permit the resale of the Transfer Restricted Securities in accordance with the intended method or methods of distribution thereof, and pursuant thereto, shall as expeditiously as possible prepare and file with the Commission a Shelf Registration Statement relating to registration on any appropriate form under the Securities Act.

(b) In connection with the Shelf Registration Statement and any Prospectus required by this Agreement to permit the resale of Transfer Restricted Securities, the Issuer shall:

(i) Subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), use its commercially reasonable best efforts to keep the Shelf Registration Statement continuously effective during the Effectiveness Period. Upon the occurrence of any event that would cause the Shelf Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not be effective and usable for resale of Transfer Restricted Securities during the Effectiveness Period, the Issuer shall file promptly an appropriate amendment to the Shelf Registration Statement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use its commercially reasonable best efforts to cause any such amendment to be declared effective and the Shelf Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter. Notwithstanding the foregoing, the Issuer may suspend or delay the effectiveness of the Shelf Registration Statement by written notice to the Holders for a period not to exceed an aggregate of 45 days in any 90-day period (each such period, a "Suspension Period") if:

(x) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in the Issuer's reasonable judgment, contain an untrue

statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and

(y) the Issuer reasonably determines that the disclosure of such event at such time would (i) have a material adverse effect on the business of the Issuer (and its subsidiaries, if any, taken as a whole) or (ii) the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Issuer's ability to consummate such transaction; provided, however, that in the event the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Issuer's ability to consummate such transaction, the Issuer may extend a Suspension Period from 45 days to 60 days; and provided further, that Suspension Periods shall not exceed an aggregate of 90 days in any 360-day period.

(ii) Subject to Section 4(b)(i), prepare and file with the Commission such post-effective amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement effective during the Effectiveness Period; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Shelf Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in the Shelf Registration Statement or Prospectus supplement. Notwithstanding anything contained herein to the contrary, the Issuer shall not be required to supplement the Shelf Registration Statement for the purpose of naming Holders of Transfer Restricted Securities as selling security holders more than once per fiscal quarter.

(iii) Advise the selling Holders that have provided the information required by Section 4(d) of this Agreement, the Representative, and the underwriter(s), if any, promptly (but in any event within five Business Days) and, if requested by such Persons, confirm such advice in writing:

(A) with respect to the Shelf Registration Statement or any post-effective amendment thereto, when the same has become effective, and when the Prospectus or any Prospectus supplement or post-effective amendment has been filed,

(B) of any request by the Commission for amendments to the Shelf Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto,

(C) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the

Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, or

(D) of the existence of any fact or the happening of any event, during the Effectiveness Period, that makes any statement of a material fact made in the Shelf Registration Statement or the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Shelf Registration Statement or the Prospectus in order to make the statements therein not misleading.

If at any time the Commission shall issue any stop order suspending the effectiveness of the Shelf Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or Blue Sky laws, the Issuer shall use its reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

(iv) Before filing any Shelf Registration Statement or Prospectus or any amendment or supplement thereto (other than filings with the Commission that are automatically incorporated by reference into the Shelf Registration Statement or Prospectus), furnish to the Initial Purchasers copies of all such documents proposed to be filed and use reasonable efforts to reflect in each such document when so filed with the Commission such comments as the Initial Purchasers shall reasonably propose within three (3) Business Days of the delivery of such copies to the Initial Purchasers.

(v) If the selling Holders propose to make an underwritten public offering of the Transfer Restricted Securities, make available at reasonable times for inspection by one or more representatives of the selling Holders, designated in writing by a Majority of Holders whose Transfer Restricted Securities are included in the Shelf Registration Statement, any underwriter participating in any distribution pursuant to the Shelf Registration Statement and any attorney or accountant retained by such selling Holders or any of the underwriter(s), all financial and other records, pertinent corporate documents and properties of the Issuer as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the Issuer's officers, directors, managers and employees to supply all information reasonably requested by any such representative or representatives of the selling Holders, underwriter, attorney or accountant in connection with the Shelf Registration Statement after the filing thereof and before its effectiveness; provided, however, that any information designated by the Issuer as confidential at the time of delivery of such information shall be kept confidential by the recipient thereof.

(vi) If requested by any selling Holders, the Representative, or the underwriter(s), if any, promptly incorporate in the Shelf Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders, the Representative, and such underwriter(s), if any, may reasonably request to have included therein, including, without limitation: (1) information relating to the "Plan of Distribution" of the Transfer Restricted Securities, (2) information with respect to the principal amount of Debentures or number of shares of Common Stock being

sold to such underwriter(s), (3) the purchase price being paid therefor and (4) any other terms of the offering of the Transfer Restricted Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after the Issuer is notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment. Notwithstanding the foregoing, following the effective date of the Shelf Registration Statement, the Issuer shall not be required to file more than one such supplement or post-effective amendment to reflect changes in the amount of Debentures held by any particular Holder at the request of such Holder in any fiscal quarter.

(vii) Furnish to each selling Holder, the Representative, and each of the underwriter(s), if any, without charge, at least one copy of the Shelf Registration Statement, as first filed with the Commission, and of each amendment thereto as such Person may request).

(viii) Deliver to each selling Holder, the Representative, and each of the underwriter(s), if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons reasonably may request; subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), the Issuer hereby consents to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto.

(ix) If an underwriting agreement is entered into and the registration is an Underwritten Registration, the Issuer shall:

(A) upon request, furnish to each selling Holder and the underwriter(s), if any, in such substance and scope as they may reasonably request and as are customarily made by issuers to underwriters in primary underwritten offerings, upon the date of closing of any sale of Transfer Restricted Securities in an Underwritten Registration: (1) a certificate, dated the date of such closing, signed by the Chief Financial Officer of the Issuer confirming, as of the date thereof, the matters set forth in Section 6(e) of the Purchase Agreement and such other matters as such parties may reasonably request; (2) opinions, each dated the date of such closing, of counsel to the Issuer covering such of the matters set forth in Sections 6(a), 6(b) and 6(c) of the Purchase Agreement as are customarily covered in legal opinions to underwriters in connection with primary underwritten offerings of securities; and (3) customary comfort letters, dated the date of such closing, from the Issuer's independent certified public accountants (and from any other accountants whose report is contained or incorporated by reference in the Shelf Registration Statement), in the customary form and covering matters of the type customarily covered in comfort letters to underwriters in connection with primary underwritten offerings of securities;

(B) set forth in full in the underwriting agreement, if any, indemnification provisions and procedures which provide rights no less protective than those set forth in Section 6 hereof with respect to all parties to be indemnified; and

(C) deliver such other documents and certificates as may be reasonably requested by such parties to evidence compliance with clause (A) above and with any customary conditions contained in the underwriting agreement or other agreement entered into by the selling Holders pursuant to this clause (ix).

(x) Before any public offering of Transfer Restricted Securities, cooperate with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Transfer Restricted Securities under the securities or Blue Sky laws of such jurisdictions as the selling Holders or underwriter(s), if any, may reasonably request and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the Shelf Registration Statement; provided, however, that the Issuer shall not be required (A) to register or qualify as a foreign corporation or a dealer of securities where it is not now so qualified or to take any action that would subject it to the service of process in any jurisdiction where it is not now so subject or (B) to subject itself to taxation in any such jurisdiction if they are not now so subject.

(xi) Cooperate with the selling Holders and the underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and, when issued to the purchasers of Transfer Restricted Securities pursuant to the Shelf Registration Statement, not bearing any restrictive legends (unless required by applicable securities laws); and enable such Transfer Restricted Securities to be in such denominations and registered in such names as the selling Holders or the underwriter(s), if any, may request at least five Business Days before any sale of Transfer Restricted Securities made by the selling Holders or such underwriter(s).

(xii) Use its commercially reasonable best efforts to cause the Transfer Restricted Securities covered by the Shelf Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Transfer Restricted Securities.

(xiii) Subject to Section 4(b)(i) hereof, if any fact or event contemplated by Section 4(b)(iii)(D) hereof shall exist or have occurred, use its commercially reasonable best efforts to prepare a supplement or post-effective amendment to the Shelf Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(xiv) Provide CUSIP numbers for all Transfer Restricted Securities not later than the effective date of the Shelf Registration Statement and provide the Trustee under

the Indenture with certificates for the Debentures that are in a form eligible for deposit with The Depository Trust Company.

(xv) Cooperate with respect to any filings required to be made with the NASD and in the performance of any due diligence investigation by any underwriter that is required to be retained in accordance with the rules and regulations of the NASD.

(xvi) Otherwise use its commercially reasonable best efforts to comply with all applicable rules and regulations of the Commission and all reporting requirements under the rules and regulations of the Exchange Act.

(xvii) Cause the Indenture to be qualified under the TIA not later than the effective date of the Shelf Registration Statement required by this Agreement, and, in connection therewith, cooperate with the Trustee and the holders of Debentures to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; and execute and use its commercially reasonable best efforts to cause the Trustee thereunder to execute all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner.

(xviii) Cause all Transfer Restricted Securities covered by the Shelf Registration Statement to be listed or quoted, as the case may be, on each securities exchange or automated quotation system on which similar securities issued by the Issuer are then listed or quoted.

(xix) Make available to each Holder upon written request each document filed with the Commission pursuant to the requirements of Section 13 and Section 15 of the Exchange Act after the effective date of the Shelf Registration Statement.

(xx) If reasonably requested by the underwriters, make appropriate officers of the Issuer reasonably available to the underwriters for meetings with prospective purchasers of the Transfer Restricted Securities and prepare and present to potential investors customary "road show" material in a manner consistent with new issuances of other securities similar to the Transfer Restricted Securities.

(xxi) Use its commercially reasonable best efforts to obtain a waiver from each person who would otherwise have the right to have securities of the Issuer (other than Transfer Restricted Securities) registered on the Shelf Registration Statement required by this Agreement. To the extent the Issuer does not receive such waivers, it will use its commercially reasonable best efforts to obtain the consent of such persons from whom waivers are not obtained to file a separate registration statement with respect to all such other registrable securities, rather than include them in the Shelf Registration Statement and, upon receipt of such consent, to register such registrable securities in accordance therewith.

(c) Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice from the Issuer of the existence of any fact of the kind described in Section 4(b)(iii)(D) hereof, such Holder will, and will use its reasonable best efforts to cause any

underwriter(s) in an Underwritten Offering to, forthwith discontinue disposition of Transfer Restricted Securities pursuant to the Shelf Registration Statement until:

(i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 4(b)(xiii) hereof; or

(ii) such Holder is advised in writing (the "Advice") by the Issuer that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus. If so directed by the Issuer, each Holder will deliver to the Issuer (at the Issuer's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such notice of suspension.

(d) Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall furnish to the Issuer in writing, prior to or on the 20 day after receipt of a request therefor as set forth in a questionnaire, such information regarding such Holder and the proposed distribution by such Holder of its Transfer Restricted Securities as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. (The form of the questionnaire is attached as Annex A to the Offering Memorandum). Holders that do not complete the questionnaire and deliver it to the Issuer shall not be named as selling securityholders in the Prospectus or preliminary Prospectus included in the Shelf Registration Statement and therefore shall not be permitted to sell any Transfer Restricted Securities pursuant to the Shelf Registration Statement. Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall promptly furnish to the Issuer in writing such other information as the Issuer may from time to time reasonably request in writing. Each Holder as to which the Shelf Registration Statement is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make information previously furnished to the Issuer by such Holder not materially misleading.

5. Registration Expenses.

(a) Except as provided in Sections 8 and 9, all expenses incident to the Issuer's performance of or compliance with this Agreement shall be borne by the Issuer regardless of whether a Shelf Registration Statement becomes effective, including, without limitation:

(i) all registration and filing fees and expenses (including filings made by any Initial Purchaser, Holders or underwriters with the NASD);

(ii) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws;

(iii) all expenses of printing (including printing of Prospectuses and certificates for the Common Stock to be issued upon conversion of the Debentures), messenger and delivery services and telephone;

(iv) all fees and disbursements of counsel to the Issuer and, subject to Section 5(b) below, the Holders of Transfer Restricted Securities;

(v) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and

(vi) all fees and disbursements of independent certified public accountants of the Issuer (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuer shall bear its internal expenses (including, without limitation, all salaries and expenses of their officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Issuer.

(b) In connection with the review of the Shelf Registration Statement and other documents referred to in this Agreement, the Issuer shall, against a reasonably detailed invoice therefor, reimburse the Representative, on behalf of the Initial Purchasers, and the Holders of Transfer Restricted Securities being registered pursuant to the Shelf Registration Statement, for the reasonable fees and disbursements of not more than one counsel, which shall be Cahill Gordon & Reindel LLP, or such other counsel as may be chosen by a Majority of Holders for whose benefit the Shelf Registration Statement is being prepared.

6. Indemnification and Contribution.

(a) The Issuer agrees to indemnify and hold harmless each Initial Purchaser, each Holder whose securities are included in a Shelf Registration Statement, each Person who participates as an underwriter (any such Person being an “Underwriter”) and each Person, if any, who controls any Initial Purchaser, Holder or Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in such Shelf Registration Statement (or any amendment thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact contained in any Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided, however that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Issuer; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by any indemnified party), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above; provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Issuer by the Initial Purchasers, such Holder or such Underwriter expressly for use in a Shelf Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto).

(b) Each Holder whose securities are included in a Shelf Registration Statement, severally but not jointly, agrees to indemnify and hold harmless the Issuer, the Initial Purchasers, each Underwriter and the other selling Holders and each Person, if any, who controls the Issuer, the Initial Purchasers, any Underwriter or any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 6(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in such Shelf Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information with respect to such Holder furnished to the Issuer by such Holder expressly for use in such Shelf Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto); provided, however, that no such Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Transfer Restricted Securities pursuant to such Shelf Registration Statement.

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying party or parties be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding

or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement; provided, however, that an indemnifying party shall not be liable for any such settlement if such indemnifying party (1) reimburses such indemnified party in accordance with such request for the amount of such fees and expenses of such counsel as the indemnifying party believes in good faith to be reasonable and (2) provides written notice to the indemnified party and the indemnifying party disputes in good faith the reasonableness of the unpaid balance of such fees and expenses.

(e) If the indemnification provided for in this Section 6 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer from the offering and sale of the Transfer Restricted Securities on the one hand and a Holder with respect to the sale by the Holder of the Transfer Restricted Securities on the other hand; or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Issuer on the one hand and a Holder on the other hand with respect to such offering and such sale shall be deemed to be in the same proportion as the total net proceeds from the offering of the Debentures purchased under the Purchase Agreement (before deducting expenses) received by the Issuer, as set forth in the Offering Memorandum on the one hand bear to the total net proceeds received by such Holder with respect to its sale of Transfer Restricted Securities on the other. The relative fault of the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or parties on the one hand or the indemnified party or parties on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of

allocation which does not take account of the equitable considerations referred to above in this Section 6. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 6 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 6, no Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Transfer Restricted Securities purchased by it were resold exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. The Holders' obligations to contribute as provided in this Section 6(e) are several and not joint. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 6, each Person, if any, who controls an Initial Purchaser, a Holder or an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as such Initial Purchaser, such Holder or such Underwriter, and each director of the Issuer, and each Person, if any, who controls the Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Issuer.

7. Rule 144A. In the event the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer hereby agrees with each Holder, for so long as any Transfer Restricted Securities remain outstanding, to make available to any Holder or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A.

8. Participation in Underwritten Registrations. No Holder may participate in any Underwritten Registration hereunder unless such Holder:

(i) agrees to sell such Holder's Transfer Restricted Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements, and

(ii) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such underwriting arrangements.

The Holders participating in any underwritten offering shall be responsible for any expenses customarily borne by selling security holders, including underwriting discounts and commissions and fees and expenses of counsel to the selling securities holders, and shall reimburse the

Company for the fees and disbursements of their counsel, their independent public accountants and any printing expenses incurred in connection with such Underwritten Offering.

9. Selection of Underwriters. The Holders of Transfer Restricted Securities covered by the Shelf Registration Statement who desire to do so may sell such Transfer Restricted Securities in an Underwritten Offering so long as at least 25% of the Transfer Restricted Securities are included in the Underwritten Offering. In any such Underwritten Offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by a Majority of Holders whose Transfer Restricted Securities are included in such offering; provided, that such investment bankers and managers must be reasonably satisfactory to the Issuer. Without limiting the Company's rights in Section 4(a)(i), and notwithstanding the foregoing or the provisions of Section 4(b)(iv) hereof, upon receipt of a request to prepare and file an amendment or supplement to the Shelf Registration Statement or Prospectus in connection with an Underwritten Offering, the Company may delay the filing of such amendment or supplement for up to 60 days if the Company in good faith has a valid business reason for such delay.

10. Miscellaneous.

(a) Remedies. The Issuer acknowledges and agrees that any failure by the Issuer to comply with its obligations under Section 2 hereof may result in material irreparable injury to the Initial Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Initial Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Issuer's obligations under Section 2 hereof. The Issuer further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) Adjustments Affecting Transfer Restricted Securities. The Issuer shall not, directly or indirectly, take any action with respect to the Transfer Restricted Securities as a class that would adversely affect the ability of the Holders to include such Transfer Restricted Securities in a registration undertaken pursuant to this Agreement.

(c) No Inconsistent Agreements. The Issuer will not, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. In addition, the Issuer shall not, on or after the date hereof, grant to any of its security holders (other than the holders of Transfer Restricted Securities in such capacity) the right to include any of its securities in the Shelf Registration Statement provided for in this Agreement other than the Transfer Restricted Securities. Except as disclosed in the Offering Memorandum, the Issuer has not previously entered into any agreement (which has not expired or been terminated) granting any registration rights with respect to its securities to any Person which rights conflict with the provisions hereof.

(d) Amendments and Waivers. This Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, unless the Issuer has obtained the written consent of a Majority of Holders.

(e) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or certified, return receipt requested), telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the registrar under the Indenture or the transfer agent of the Common Stock, as the case may be; and

(ii) if to the Issuer:

Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: Brandi L. Galvin

With a copy (which shall not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP
155 Constitution Drive
Menlo Park, California 94025
Attention: Scott Dettmer, Esq.

All such notices and communications shall be deemed to have been duly given and received by the addressee: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including without limitation and without the need for an express assignment, subsequent Holders of Transfer Restricted Securities; provided, however, that (i) this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Transfer Restricted Securities from such Holder and (ii) nothing contained herein shall be deemed to permit any assignment, transfer or other disposition of Transfer Restricted Securities in violation of the terms of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Transfer Restricted Securities, in any manner, whether by operation of law or otherwise, such Transfer Restricted Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Transfer Restricted Securities such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) Securities Held by the Issuer or Their Affiliates Whenever the consent or approval of Holders of a specified percentage of Transfer Restricted Securities is required

here-under, Transfer Restricted Securities held by the Issuer or its “affiliates” (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(i) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(j) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

(k) Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(l) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Issuer with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

EQUINIX, INC.

By: /s/ RENEE F. LANAM

Name: Renée F. Lanam
Title: Chief Financial Officer

Accepted as of the date first set forth above:

By: Citigroup Global Markets Inc. for itself and the other Initial Purchasers, if any, named in Schedule I to the foregoing Agreement.

CITIGROUP GLOBAL MARKETS INC.

By: /s/ JONATHAN F. MAUCK

Name: Jonathan F. Mauck
Title: Vice President

SCHEDULE I

Initial Purchasers

**Principal Amount
of Firm Securities
to be Purchased**

Citigroup Global Markets Inc	\$ 67,500,000
SG Cowen Securities Corporation	\$ 7,500,000
Total	\$ 75,000,000

July 15, 2003

Kristine Mostofizadeh
Equinix Operating Co., Inc.
301 Velocity Way, 5th Floor
Foster City, CA 94404

Re: First Amendment to Lease Agreement dated September 1, 1999, between Lakeside Purchaser, L.L.C., as successor in interest to Carlyle-Core Chicago, LLC, and Equinix Operating Co., Inc., as successor in interest to Equinix, Inc., a Delaware corporation.

Dear Ms. Mostofizadeh,

This letter shall constitute (a) a First Amendment ("First Amendment") to that certain Lease Agreement dated September 1, 1999 (the "Lease") between Lakeside Purchaser, L.L.C. ("Landlord") as successor in interest to Carlyle-Core Chicago, LLC, and Equinix Operating Co., Inc. ("Tenant"), as successor in interest to Equinix, Inc., with regard to Tenant's use of certain manhole and conduit space at Lakeside Technology Center located at 350 East Cermak Road, Chicago, Illinois (the "Building"), and (b) an agreement to terminate that certain Outside Conduit Access Agreement, dated March 9, 2001, between Tenant and Carlyle-Core Chicago, LLC (the "Outside Conduit Access Agreement").

I. Amendment of Section 5 of Lease. Landlord and Tenant hereby agree to amend the Lease by incorporating the following Sections 5(d), (e), (f), (g), and (h) into the Lease:

"5(d) Fiber Path Entry

Tenant shall have:

- (i) the non-exclusive right to use the existing "Exterior Fiber Vault Manholes", Numbers 3 and 5, and the existing "Conduit Pathways" between such Exterior Fiber Vault Manholes and the associated Building "Interior Fiber Vaults", subject to the terms and conditions outlined in this First Amendment; and
- (ii) the exclusive right to use the conduits and innerducts described in subparagraphs (A)-(D) below ("Exterior Conduits"), subject to the terms and conditions outlined in this First Amendment:
 - (A) Three (3) four inch (4") conduits or twelve (12) one and one-quarter inch (1-1/4") innerducts or a combination thereof not to exceed seventy-five (75) square inches of manhole surface area of penetration in the Exterior Fiber Vault

Manhole 3 located at East 22nd Street and South Prairie Avenue (i.e. Phase 6B); provided, however, that Tenant shall have the right to utilize only four (4) one and one-quarter inch (1-1/4") smooth wall innerducts extending from Exterior Fiber Vault Manhole 3, as described in subparagraph (B) below.

(B) Three (3) one and one-quarter inch (1-1/4") innerducts contained within one (1) four inch (4") conduit, and one (1) one and one-quarter inch (1-1/4") innerduct number 04 contained within another four inch (4") conduit as designated by Landlord, within the existing Conduit Pathway between the Exterior Fiber Vault Manhole 3 located at East 22nd Street and South Prairie Avenue (i.e. Phase 6B) and the associated Interior Fiber Vault located in the lower level of the Building (Northwest corner of 350 East Cermak Road).

(C) Three (3) four inch (4") conduits or twelve (12) one and one-quarter inch (1-1/4") innerducts or a combination thereof not to exceed seventy-five (75) square inches of manhole surface area of penetration in the Exterior Fiber Vault Manhole 5 located at South Calumet Avenue near East Cullerton Street (i.e. Phase 7); provided, however, that Tenant shall have the right to utilize only four (4) one and one-quarter inch (1-1/4") smooth wall innerducts extending from Exterior Fiber Vault Manhole 5, as described in subparagraph (D) below.

(D) Three (3) one and one-quarter inch (1-1/4") innerducts contained within one (1) four inch (4") conduit, and one (1) one and one-quarter inch (1-1/4") innerduct number 29 in another four inch (4") conduit as designated by Landlord, within the existing Conduit Pathway between the Exterior Fiber Vault Manhole 5 located at South Calumet Avenue near East Cullerton Street (i.e. Phase 7) and the associated Interior Fiber Vault located in the lower level of the Building (Northeast corner of 350 East Cermak Road).

- (iii) In addition to the rights granted above, Tenant, with Landlord's prior written approval not to be unreasonably withheld or delayed, shall have the right to replace Landlord's installed one and one-quarter inch (1-1/4") innerducts (excluding innerduct number 04 and innerduct number 29) contained within each of the four inch (4") conduits described in subparagraphs (B) and (D) at Tenant's sole cost, expense, and liability, with an innerduct of a quantity and size as solely determined by Tenant. Tenant shall have the exclusive right to use each additional innerduct gained by Tenant's replacement of Landlord's innerduct, subject to all terms and conditions of this First Amendment.

(e) Fees

Landlord acknowledges that Tenant has paid the following fees in connection with the rights granted in Section 5(d), and that no other fees shall be due and owing to Landlord for the same in connection with such rights (with the exception of management fees which are hereinafter described);

(i) one time fee of one hundred forty-four thousand nine hundred and no/100 Dollars (\$144,900.00) for the use of the Exterior Conduits (excluding innerduct number 04 and innerduct number 29) in the locations specified above (1,619 linear fee at \$90.00 per linear foot); and

(ii) one time fee of forty-five thousand and no/100 Dollars (\$45,000.00) for the Exterior Conduits (excluding innerduct number 04 and innerduct 29) penetrations described above into the Interior Fiber Vaults (6-1 1/4" innerduct penetrations at \$7,500.00 each).

Within thirty (30) days after receipt of invoice, Tenant shall pay Landlord its reasonable costs of managing and monitoring Tenant's penetrations into the Exterior Fiber Vault Manholes at the authorized points of penetration. For sixty (60) days following payment of Landlord's invoice, Tenant shall have the right to audit Landlord's books and records regarding such costs in accordance with Section 4(b)(iii) of the Lease.

All fees payable pursuant to the provisions of this Section 5(e) shall constitute Additional Rent under the Lease.

(f) Use

Tenant has the right to use Tenant's allotment (as described in Section 5(d)) of Exterior Conduits, Exterior Fiber Vault Manholes, Conduit Pathways, Interior Fiber Vaults, and Risers within and around the Building as a means to bring telecommunication carriers and providers and/or utilities (as solely designated by Tenant) to the Building and/or the Premises, for the use of Tenant, Tenant's customers and telecommunication carriers and providers of Tenant and/or Tenant's customers, in their normal business operations, regardless of whether such telecommunication carrier or provider is a Building occupant; provided however, Tenant shall not have the right to connect to providers, Tenant's customers or other tenants in the Building at any place in the Building, other than the Building's Meet Me Room or in Tenant's Premises. The Exterior Conduits shall be located along a physical route reasonably designated by Landlord, and shall be installed in a manner approved by Landlord, which approval shall be obtained by Tenant utilizing the guidelines and procedures identified in Section 5(g) below. All penetrations into the Building must come through the Landlord's Exterior Fiber Vault Manholes. Tenant's use of the Building's Meet Me Room shall be subject to the terms, fees and standard practices of the Building's Meet Me Room, managed by EP Connect, L.L.C.

(g) Installation Process

Tenant shall comply with Landlord's standards and procedures for access and use of the Exterior Conduits including, but not be limited to, the following:

(i) Tenant shall request a manhole assignment from the Landlord, at each of the Exterior Fiber Vault Manholes, at a location specified by Landlord in the public way, at least 5 business days prior to the date of planned penetration

(Landlord response expected to be 24 hours). Landlord's consent to such request shall not be unreasonably withheld, conditioned or delayed. Upon receipt of the assignment from Landlord, Tenant shall provide Landlord a proposed elevation drawing and shall arrange with Landlord to establish a dig line for penetration.

(ii) Within 5 business days after receipt of Tenant's request for a manhole assignment, Landlord shall arrange for a designated representative to be on-site for the entire period of Tenant's manhole entry. Tenant shall not enter any manhole without a representative of Landlord being present.

(iii) Tenant shall ensure that Tenant's manholes, and/or manholes of Tenant's network providers, are not placed within one hundred (100) feet of any Exterior Fiber Vault Manhole to aid in the protection and preservation of access to the Building by other Building tenants and/or their network providers.

(iv) Tenant shall not splice telecommunication cable within the Exterior Fiber Vault Manholes. Splicing or transition of telecommunication cable shall only be permitted within space reasonably allocated to Tenant by Landlord to accommodate the Exterior Conduits within the Interior Fiber Vaults.

(v) A maximum length of service loop must be approved by Landlord within the Exterior Fiber Vault Manholes. Length of service loop and the space required for such service loop shall be submitted for Landlord approval prior to installation in the Exterior Fiber Vault Manholes or authorized in writing by Landlord's designated representative, which approval or authorization shall not be unreasonably withheld.

(vi) Landlord shall designate reasonable locations for mounting of splice cases within the Interior Fiber Vaults. Tenant shall not mount splice cases or route cable through the Interior Fiber Vaults until the cable routing is reasonably approved in writing by Landlord.

(vii) Tenant shall not pull telecommunication cable or any media through the Exterior Fiber Vault Manholes, or perform any work within the Exterior Fiber Vault Manholes without the presence of Landlord's representative.

(viii) Tenant shall reimburse Landlord for the reasonable costs incurred by Landlord for review of Tenant's plans and coordination/supervision of the installation described herein.

(h) City of Chicago Agreement

Tenant expressly acknowledges that, with respect to Tenant's installation of fiber from the Exterior Fiber Vault Manholes, all such use of and access to such fiber (including any work related to the installation of such fiber), is expressly made subject to the provisions of that certain Conduit Path Use Agreement dated as of June 1, 2000 by and between the

City of Chicago (“City”) and Landlord (the “Conduit Path Use Agreement”). Tenant acknowledges that a copy of the Conduit Path Use Agreement has been provided to Tenant for its review. Tenant expressly agrees to coordinate all work related to the Exterior Conduits and fiber with Landlord and, where necessary, the City, and to comply at all times with the provisions of the Conduit Path Use Agreement, and Landlord’s Building standard rules or guidelines in effect from time to time. All work shall be carried out in compliance with Tenant’s obligations under the Lease, and all work shall be performed by a contractor reasonably approved by Landlord or chosen from Landlord’s list of approved contractors.”

2. Termination of Agreement. Tenant and Landlord agree that the Outside Conduit Access Agreement dated March 9, 2001 shall be terminated as of the date of Tenant’s execution of this First Amendment, and thereafter shall have no farther force and effect.

3. The Lease. Except as amended hereby, all other terms and conditions of the Lease shall remain in full force and effect. All capitalized terms used herein shall have the meanings ascribed to them in the Lease.

4. Binding Effect and Counterparts. The Lease as modified by this First Amendment sets forth the full and complete understanding between Landlord and Tenant with respect to the matters addressed herein. This First Amendment may be executed in counterparts. A telecopy transmission of a signed copy of this First Amendment shall constitute a binding and effective execution by the signing party.

If the terms of this First Amendment are acceptable, please have a duly authorized representative of Tenant execute both copies and return one fully executed copy to the undersigned, whereupon this letter shall constitute a binding agreement between us, our successors and permitted assigns.

Sincerely,

LAKESIDE PURCHASER, L.L.C.

By: /s/ Bryan W. Neskora

Name: Bryan W. Neskora

Title: President

ACCEPTED AND AGREED TO:

This 23 day of July, 2003

EQUINIX OPERATING CO., INC.

By: /s/ Kristine Mostofizadeh

Name: Kristine Mostofizadeh

Title: Director of Real Estate

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

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 report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 6, 2004

/s/ PETER F. VAN CAMP
Peter F. Van Camp
Chief Executive Officer

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

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 report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 6, 2004

/s/ RENEE F. LANAM
Renee F. Lanam
Chief Financial Officer

**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, 2004 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. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ PETER F. VAN CAMP
Peter F. Van Camp
Chief Executive Officer
May 6, 2004

**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, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Renée F. Lanam, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ RENEE F. LANAM
Renée F. Lanam
Chief Financial Officer
May 6, 2004