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

FORM 10-K

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

For the fiscal year ended December 31, 2002

OR

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

For the transition period from _____ to _____

Commission file number 000-31293

EQUINIX, INC.
(Exact name of registrant as specified in its charter)

Delaware	**77-0487526**
(State of incorporation)	**(IRS 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)

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

None

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

Common Stock, $0.001

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). ☐ Yes ☒ No

The aggregate market value of the voting and non-voting common stock held by non-affiliates computed by reference to the price at which the common stock was last sold, or the average bid and asked price of such common stock, as of the last business day of the registrant's most recently completed second fiscal quarter was approximately $27.5 million.

As of February 28, 2003, a total of 8,500,040 shares of the registrant's common stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III—Portions of the registrant's definitive Proxy Statement to be issued in conjunction with the registrant's 2003 Annual Meeting of Stockholders, which is expected to be filed not later than 120 days after the registrant's fiscal year ended December 31, 2002. Except as expressly incorporated by reference, the registrant's Proxy Statement shall not be deemed to be a part of this report on Form 10-K.

EQUINIX, INC.

FORM 10-K

DECEMBER 31, 2002

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PART I

ITEM 1. BUSINESS

The words "Equinix", "we", "our", "ours", "us" and the "Company" refer to Equinix, Inc. All statements in this discussion that are not historical are forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding Equinix's "expectations", "beliefs", "hopes", "intentions", "strategies" or the like. Such statements are based on management's current expectations and are subject to a number of factors and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Equinix cautions investors that there can be no assurance that actual results or business conditions will not differ materially from those projected or suggested in such forward-looking statements as a result of various factors, including, but not limited to, the risk factors discussed in this Annual Report on Form 10-K. Equinix expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Equinix's expectations with regard thereto or any change in events, conditions, or circumstances on which any such statements are based.

Overview

Equinix designs, builds and operates Internet Business Exchange ("IBX") hubs where Internet businesses place their equipment and their network facilities in order to interconnect with each other to improve Internet performance. We currently operate fifteen IBX hubs located in six countries in the United States and Asia-Pacific that allow critical Internet networks, global enterprises, content providers and other infrastructure providers to connect their networks to manage and grow their network and Internet operations for significant cost savings and increased performance and reliability. We have successfully united the major companies that make up the Internet under one roof, which provides our customers the opportunity to directly connect to networks and managed service partners in order to increase performance and lower their costs of operations. The world's top tier Internet service providers, the majority of the most important access networks and second tier carriers, many international carriers and 5 of the top 7 web properties have all located at our IBX hubs to directly connect with each other and their customers.

We provide a wide range of network-neutral colocation, traffic exchange, connectivity and managed IT infrastructure services to our customers. We build and manage premier colocation hubs, which offer state of the art design and security for customers' colocation needs. The colocation products include cabinets, power, cross connections and professional services for installation and maintenance of our customers' colocation products. Traffic exchange services allow customers to trade network traffic with each other simply and easily. More than 100 major bandwidth providers and Internet service providers have placed their operations at our IBX hubs in order to interconnect with each other and with business users of network services. These customers include the world's top networks such as AT&T, WorldCom/UUNET, Sprint, KDDI, British Telecom, Cable&Wireless, Qwest, and Level 3. We are a neutral or "open" IBX environment because we do not operate our own network. As a result, we are able to offer direct interconnection to the largest aggregation of bandwidth providers and Internet service providers. This aggregation of providers attracts customers such as Electronic Arts, Electronic Data Systems, Goldman Sachs, Google, IBM, Kyocera, MSN, Washingtonpost.Newsweek Interactive and Yahoo!. Direct interconnection to our aggregation of networks, which serve more than 90% of the world's Internet routes, allows our customers to significantly reduce costs, including the costs of purchasing circuits to reach partners in multiple locations, and significantly enhances the speed and reliability of their operations.

The wide variety of networks and business partners is an important reason why customers choose us, and customers look to Equinix to help manage this choice in order to simplify their operations. We also offer a suite of managed IT infrastructure services and will continue to provide new services to help customers maximize the advantage of multiple bandwidth and Internet service providers. These services include the management of multiple carriers, disaster recovery and other outsourcing services. For example, we offer customers connectivity

to bandwidth from multiple carriers and provide all of the necessary management and routing technology to ensure each customer is getting the maximum benefits of carrier redundancy. We also provide customers monitoring and site management services so that customers have direct insight into how their operations are performing. Disaster recovery services include remote backup and recovery, standby operations facilities and data storage services. In addition, a wider suite of managed services such as messaging services is offered in select Asia-Pacific locations. All of these services provide customers with one simple point of contact for contracting and ongoing support and maintenance. We will continue to introduce new services that customers can use to improve the overall performance of their operations.

In December 2002, Equinix merged with two of the leading network-neutral colocation providers in Asia to expand our footprint into the fast growing Asia-Pacific market. We now have fifteen IBX hubs, consisting of more than one million square feet, which operate in key United States and Asia-Pacific Internet intersection points. In the US, Equinix has an IBX hub in Washington, D.C., Dallas, Chicago, Honolulu, Silicon Valley and two each in Los Angeles and the New York area. In Asia-Pacific, Equinix has an IBX hub in Hong Kong, Tokyo, Sydney, Bangkok and two IBX hubs in Singapore. In addition, we have a strategic partnership established in Europe to serve our customers' needs.

Industry Background

The Internet is a collection of numerous independent networks interconnected with each other to form a network of networks. Users on different networks are able to communicate with each other through interconnection between these networks. For example, when a user of the Internet sends an email to another user, assuming that each person uses a different network provider, the email must pass from one network to the other in order to get to the final destination.

In order to accommodate the rapid growth of Internet traffic, an organized approach for network interconnection was needed. The exchange of traffic between these networks became known as peering. Peering is when networks trade traffic at relatively equal amounts and set up agreements to trade traffic for free. At first, government and non-profit organizations established places where these networks could exchange traffic, or peer, with each other—these points were known as network access points, or NAPs. Over time, many NAPs became a natural extension of carrier services and were run by such companies as MFS (later known as WorldCom/UUNET), Sprint, Ameritech and Pacific Bell (both later known as SBC).

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

To accommodate Internet traffic growth, the largest of these networks left the NAPs and began trading traffic by placing private circuits between each other. Peering which once occurred at the NAP locations were moved to these private circuits. Over the years, these circuits became expensive to expand and could not be built fast enough to accommodate the growth in traffic. This led to a need by the large carriers to find a more efficient way to trade traffic or peer. Customers have chosen Equinix for their peering operations because they are now able to reach all of the networks they peer with all in one location, with simple direct connections. Their ability to peer across the room, instead of across a metro area has increased the scalability of their operations while decreasing cost by upwards of 50%.

Our IBX hubs are the next-generation exchange points. They are designed to handle the scalability issues that exist between both large and small networks, as well as the interconnection between the emerging companies who have become critical to the Internet. We have been successful in uniting the major companies that make up

the Internet infrastructure including AT&T, Cable & Wireless, Level 3, Qwest, Sprint and UUNET/Worldcom. These companies, which constitute the world's largest top Internet service providers, together with most of the major access networks, including SBC, Shaw Communications, Cox Communications, Comcast Corporation, America Online and MSN, second tier backbones such as Williams, Global Crossing, and Verio, top international telecommunications carriers, including British Telecom, Deutsche Telecom, France Telecom, KDDI, Singapore Telecom, StarHub, Japan Telecom, Hutchison, Bell Canada, Telia and Telstra, and almost every fiber, sonet, Ethernet and competitive local exchange company, including OnFiber Communications, Yipes, Looking Glass Networks and Cogent Communications, and incumbent local exchange company, including Verizon, SBC and Ameritech, are our customers and use us to interconnect with each other and their customers. Additionally, we provide an important industry leadership role in the area of exchange points and are consistently looked to as an industry expert and key influence in this subject matter.

Large and small content providers and enterprises can now control their own network performance and destiny by choosing the various service providers they wish to work with and by establishing direct connections or by contracting through Equinix for this connectivity. For our customers, this represents significant cost savings and increased performance.

Our Solution

Our IBX hubs provide the environment and services to meet the networking and IT operations challenges facing enterprises, networks and Internet businesses today. As a result, we are able to provide the following key benefits to our customers:

Performance. Because we provide direct access to the providers that serve more than 90% of the world's Internet networks and users, customers can quickly, efficiently, cost-effectively and reliably exchange traffic with their network services providers for higher performance operations. Access to the more than 100 networks ensures high-quality interconnection. With the mass of networks present, global enterprises are increasingly looking at ways to provide network diversity and increase performance of their operations, and are utilizing our IBX hubs to ensure their IT infrastructures are operating at the core of the Internet. By using multiple networks, customers are able to insure their operations in the event that one of their network service providers has a service interruption or restructuring in the business. The network service providers and geographic diversity we offer provides customers with the flexibility to enable the highest performing Internet operations.

Improved Economics. Our U.S. services such as Equinix GigE Exchange and Equinix Internet Core Exchange facilitate peering and dramatically reduce costs for critical transit, peering and traffic exchange operations by eliminating the costs of private peering or local loops. Networks such as SBC and Shaw Communications and content providers such as Yahoo!, MSN and Google can save between 20% to 40% of bandwidth costs through the traffic exchange services we offer. In addition, in both the U.S. and Asia-Pacific, content companies and enterprises can save significant bandwidth costs because the number of networks housed within Equinix competing for the traffic of these companies results in lowers prices while increasing performance.

Access to International Markets. Equinix offers it's network, content and enterprise customers a one-stop solution for their outsourced IT infrastructure needs in the U.S. and Asia-Pacific. This is especially important for U.S. enterprises who want to expand into Asia-Pacific, where a myriad of complexities for doing business in each country remains challenging. Equinix offers a consistent standard of quality, a single contract and a single point of support for all our locations throughout the U.S. and Asia-Pacific.

Our Strategy

Our objective is to become the premier hub for critical Internet players to locate their operations in order to gain maximum benefits from the choice of networks and partners in the most simple and efficient manner. To accomplish this objective we employ the following strategies:

Leverage the Network Effect. We have assembled a "critical mass" of premier network providers and content companies and have become one of the core hubs of the Internet. This critical mass is a key selling point since content companies want to connect with a diverse set of networks to provide the best connectivity to their end-customers, and network companies want to sell bandwidth to content customers and interconnect with other networks in the most efficient manner. In addition, as these companies locate in our IBX hubs, they often require their suppliers and business partners to do so as well so that the full economic and performance benefits of direct interconnection can occur. These partners, in turn, pull in their business partners, thus creating a "network effect" of customer adoption. For example, a large content provider or network may require that their networking partners, with whom they need to trade traffic with, locate in the same IBX hub. Similarly, a large financial site that chooses to locate in one of our IBX hubs may encourage a bandwidth provider, a site management company or another content partner, like a financial news service, to locate in the same IBX hub. In turn, these bandwidth providers or content partners will bring their business partners to the IBX hub. We have over 100 unique networks, including all of the top tier networks, allowing our customers to directly interconnect with providers that serve more than 90% of global Internet routes.

Leverage IBX Hubs for New Products and Services. The leading networks that we have assembled uniquely positions our IBX hubs as the place to be for critical Internet companies in the U.S. and Asia-Pacific. We intend to leverage this position and offer additional traffic exchange and managed IT infrastructure services that are important to traffic exchange and the ability for enterprise companies to utilize multiple networks.

Promote our IBX hubs as the Highest Performance Points on the Internet. With all of the major U.S. carriers, many of the key international networks, five of the top seven web properties, and the more than 100 total networks as customers, our IBX hubs operate as the highest performance points on the Internet for network and Internet operations. We plan to leverage our position as the industry standard for the highest quality Internet exchange hubs to attract more networks including additional international networks, access and cable networks, as well as additional leading content and global enterprise companies. We have established a strong brand following in the networking community and through industry education and promotion, we intend to build on our strong following among all top networks, managed services providers, enterprises and content providers.

Customers

Customers typically sign renewable contracts of one or more years in length, often with options on additional space and services. Our single largest customer, IBM, represented approximately 20% and 15% of total revenues for the twelve months ended December 31, 2002 and 2001, respectively. No other single customer accounted for more than 10% of revenues for the twelve months ended December 31, 2002 or 2001.

We consider the following companies to be the core of our customer base and we offer each customer a choice of business partners and solutions that are designed to meet their unique and changing needs:

- Bandwidth providers (telecommunications carriers) and Internet service providers, or ISPs;
- Enterprises, content providers and e-commerce companies supplying information, education or entertainment content and conducting the sale of goods and services; and
- Systems Integrators and hosting companies that integrate and manage a customer's end-to-end web presence and performance.

Products and Services

Our products and services are comprised of four types: Colocation, Connectivity, Traffic Exchange and Managed IT Infrastructure services.

Colocation Services

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

Within our IBX hubs, customers can place their equipment and interconnect with a choice of Internet companies. We also provide customized solutions for customers looking to package our IBX space as part of their complete, one-stop shop solution. Our colocation products and services include:

Cabinets. Customers have several choices for colocating their networking and server equipment. They can place the equipment in one of our shared or private cages or customize their space to build their own data hub within an IBX hub. Cable trays support cables between and among cabinets. As a customer's colocation requirements increase, they can expand within their original cage or upgrade into a cage that meets their expanded requirements. Cabinets are priced with an initial installation fee and an ongoing recurring monthly charge.

Shared Cages. A shared cage environment is designed for customers needing less than five full cabinets to house their equipment. Each cabinet in a shared cage is individually secured with an advanced electronic locking system.

Private Cages. Customers that contract for a minimum of five full cabinets can use a private cage to house their equipment. Private cages are also available in larger full cabinet sizes. Each private cage is individually secured with the biometric hand-geometry system or other appropriate security.

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

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

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

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

Connectivity Services

Internet Connectivity Services. Customers who are installing in our IBX hubs generally require IP connectivity or bandwidth services. Equinix offers customers the ability to contract for these services directly with the carrier or through Equinix. Customers who wish to receive a single bill and a single point of support for all of their services contract through Equinix for their bandwidth needs. In order to maintain our network neutrality, Equinix has relationships with the top network carriers to provide these services. Equinix provides

these services on a retail basis with each individual carrier and customer and does not aggregate this traffic or run a network. Customers get the benefit of operating directly with branded carriers with the convenience of a single bill and support. Internet Connectivity Services are priced with an initial installation fee and an ongoing monthly recurring charge based on amount of bandwidth committed or used.

Traffic Exchange Services

Our traffic exchange services, currently available in Equinix U.S. locations, enable scalable, reliable and cost-effective interconnection, service and traffic exchange between bandwidth providers, Internet service providers and large content companies. In addition, we also provide an important industry leadership role by acting as the relationship broker between parties who would like to interconnect within our IBX hubs. Our staff has held significant positions in the leading industry groups such as the North American Network Operators' Group, or NANOG, and the Internet Engineering Task Force, or IETF, and bring a tremendous amount of intellectual knowledge to this market. Our staff have published industry-recognized white papers and strategy documents in the areas of peering and interconnection, many of which are used by leading institutions worldwide in furthering the education and promotion of this important network arena. We will continue to develop additional services in the area of traffic exchange that will allow customers to leverage the critical mass of networks now available in the IBX hubs. The current exchange services are comprised of the following:

Equinix Internet Core Exchange. This Internet exchange service enables direct interconnection for peering between major backbone networks and providers. Equinix Internet Core Exchange is a pre-provisioned interconnection package that enables major backbones to connect their networks directly in a centralized, neutral environment for peering and transit. The service includes pre-provisioned interconnections, premium service levels and specialized customer service features to support the quality and support levels required by the largest Internet providers in the world. Internet Core Exchange services are priced with an initial installation fee and an ongoing monthly recurring charge.

Equinix GigE Exchange. Customers may choose to connect to our exchange central switching fabric rather than purchase a direct physical cross connection. With a connection to this switch, a customer can aggregate multiple interconnects over one physical connection instead of purchasing individual physical cross connects. The GigE Exchange service is offered as a bundled service that includes a cabinet, power, cross connects and port charges. The service is priced with an initial installation fee and an ongoing monthly recurring charge.

Managed IT Infrastructure Services

With the continued growth in Internet use, networks, service providers, enterprises and content providers are challenged to deliver fast and reliable service, while lowering costs. With over 100 ISPs and carriers located in our IBX hubs, we leverage the value of network choice with our set of multi-network management and other outsourced IT services.

Equinix Performance Packages. With Equinix Performance Packages, enterprises and content companies can outsource the complications of network integration to us in order to gain the performance and redundancy benefits of connecting to multiple networks. These services address a wide range of customer needs ranging from the basics of configuring traffic to efficiently traverse multiple networks to sophisticated applications that allow customers to tune their networks to balance price and performance priorities by routing traffic across the lowest-priced path. These services are priced with an initial installation fee and an ongoing recurring monthly charge.

Equinix Command Center. Through managed software architecture, Equinix Command Center allows customers to self-monitor, manage and control applications, network devices, systems resources and user transactions. This service provides our customers with direct control over infrastructure performance and service level agreements. The service features network monitoring and management, aggregated information across multiple IBX hubs, browser-based access to detailed monitoring, and a single point of contact for support and billing. The service is priced based upon the number of items a customer monitors and is billed monthly.

Equinix Backup and Recovery. The Equinix Backup & Recovery service is a business continuity solution that provides an enterprise-class, fully managed and monitored tape backup solution in the IBX Center. The service ensures end-customer data is always secure and available whenever the customer needs to restore data to a production system, including an option to maintain copies of data outside the IBX Center. Equinix Backup & Recovery can support multiple end-customer applications, operating systems and database management systems across an extensive variety of server makes and models. The service is priced with an initial installation fee and an ongoing monthly recurring charge.

Equinix Storage Services. Equinix Storage Services provide outsourced data solutions for storage area networks, network-attached storage and backup & recovery. Services are available with different classes of redundancy, clustering, monitoring and failover functionality, meeting customer needs for both uniform and varying system environments. This functionality provides customers with a robust, easily managed, and cost effective shared storage solution. Equinix Storage Services are only available in select Asia-Pacific locations.

Equinix Mail Service. Equinix's enterprise messaging service is a complete outsourced solution, primarily based mainly on the Lotus Notes and Microsoft Exchange platform, which enterprises entrust the operation and support of their messaging application. This service is currently only available in the Equinix Singapore location and the service is priced with an initial installation fee and an ongoing monthly recurring charge.

Managed Platform Solutions. Managed Platform Solutions delivers pre-qualified, pre-installed, pre-hardened and fully managed systems platforms upon which customers can host their co-located applications. These platforms are available in different configuration to meet the needs of the customer. Each configuration includes the server(s), operating system, network connectivity, and system administration management as well as options for database and network administration. This service is only available in the Equinix Singapore location and the service is priced with an initial installation fee and an ongoing monthly recurring charge.

Sales and Marketing

Sales. We use a direct sales force and channel marketing program to market our services to network, content provider, enterprise and Internet infrastructure businesses. We organize our sales force by customer segments as well as by establishing a sales presence in diverse geographic regions, which enables efficient servicing of the customer base from a network of regional offices. In addition to our worldwide headquarters office in Silicon Valley, we have established an Asian-Pacific regional headquarters location in Singapore. Our U.S. sales offices are located in New York; Reston, Virginia; Los Angeles; Honolulu; Dallas; Chicago and Silicon Valley. Our Asia-Pacific sales offices are located in Bangkok, Hong Kong, Tokyo, Singapore and Sydney.

Our sales team works closely with each customer to foster the natural network effect of our IBX model, resulting in access to a wider potential customer base via our existing customers. As a result of the IBX interconnection model, IBX hub participants encourage their customers, suppliers and business partners to come into the IBX hubs. These customers, suppliers and business partners, in turn, encourage their business partners to locate in IBX hubs resulting in additional customer growth. This network effect significantly reduces our new customer acquisition costs.

Marketing. To support our sales effort and to actively promote our brand in the U.S. and Asia-Pacific, we conduct comprehensive marketing programs. Our marketing strategies include an active public relations campaign, strategic partnerships and on-going customer communications programs. Our marketing effort is focused on major business and trade publications, online media outlets, industry events and sponsored activities. Our staff holds leadership positions in key networking organizations and we participate in a variety of Internet, computer and financial industry conferences and place our officers and employees in keynote speaking engagements at these conferences. In addition to these activities, we build recognition through sponsoring or leading industry technical forums and participating in Internet industry standard-setting bodies. We continue to develop and host the industry's most successful educational forums focused on peering technologies and peering practices for ISPs and content providers.

Competition

Our current and potential competition includes:

- *Internet data centers operated by established U.S. and Asian-Pacific communications carriers such as AT&T, Qwest, NTT and SingTel.* Unlike the major network providers, who constructed data centers primarily to help sell bandwidth, we have aggregated multiple networks in one location, providing superior diversity, pricing and performance. Carrier data centers only provide one choice of carriers and generally require capacity minimums as part of their pricing structures. Locating in our IBX hubs provides access to top tier networks and allows customers to negotiate the best prices with a number of carriers resulting in better economics and redundancy.
- *U.S. Network access points ("NAPs") such as Palo Alto Internet Exchange and carrier operated NAPs .* NAPs, generally operated by carriers, are typically older facilities and lack the incentive to upgrade the infrastructure in order to scale with traffic growth. In contrast, we provide state-of-the-art, secure facilities and geographic diversity with round the clock support and a full range of network and content provider offerings.
- *Vertically integrated web site hosting, colocation and ISP companies such as AboveNet/MFN, Digex/WorldCom and Cable&Wireless/Exodus.* Most managed service providers require that customers purchase their entire network and managed services directly from them. We are a network and service provider aggregator and allow customers the ability to contract directly with the networks and web-hosting partner best for their business. By locating in an IBX center, hosting companies add more value to our business proposition—by bringing in more partners and customers and thus creating a network effect.

Unlike other providers whose core business are bandwidth or managed services, we focus on neutral hubs for networks, content providers and global enterprises. As a result, we are free of the channel conflict common at other hosting/colocation companies. We compete based on the quality of our facilities, our ability to provide a one-stop solution for U.S. and Asia-Pacific locations, the superior performance and diversity of our network neutral strategy, and the economic benefits of the aggregation of top networks and Internet businesses under one roof. Specifically, we have established relationships with a number of leading hosting companies such as IBM (our largest customer) and EDS. We expect to continue to benefit from several industry trends including the consolidation of supply in the colocation market, the need for contracting with multiple networks due to the uncertainty in the telecommunications market and the continued strong growth of the large and stable systems integrators.

Employees

As of December 31, 2002, we had 475 employees. We had 169 employees based at our corporate headquarters in Mountain View, California (our corporate headquarters moved to Foster City, California in March 2003) and our regional sales offices. Of those employees, 73 were in engineering and operations, 55 were in sales and marketing and 41 were in management and finance. We had 96 employees based at our Washington, D.C., New York, New York, Dallas, Texas, Chicago, Illinois, Los Angeles, California and Silicon Valley area IBX hubs. In addition, as a result of the combination with i-STT and Pihana, we added 210 employees throughout Asia-Pacific, as well as locations in Honolulu, Hawaii and Los Angeles, California. Of these employees, 24 were in engineering and operations, 61 were in sales and marketing and 44 were in management and finance. The remaining 81 employees were based at our Singapore, Tokyo, Hong Kong, Sydney and Bangkok IBX hubs in the Asia-Pacific region, as well as in the two additional U.S. IBX hubs in Los Angeles and Honolulu.

Corporate Information

We were incorporated in Delaware in June 1998. We are required to file reports under the Exchange Act with the SEC. You may read and copy our materials on file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. You may obtain information regarding the SEC's Public

Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website at http://www.sec.gov that contains reports, proxy and information statements and other information. You may also obtain copies of our annual report on Form 10-K, our quarterly reports on Form 10-Q and our current reports on Form 8-K by visiting the investor relations page on our website, www.equinix.com.

ITEM 2. PROPERTIES

Our executive offices are located in Foster City, California (we moved our corporate headquarters from Mountain View, California in March 2003). We have entered into leases for IBX hubs in Ashburn, Virginia; Newark and Secaucus, New Jersey; San Jose and Los Angeles, California; Chicago, Illinois; Dallas, Texas; Honolulu, Hawaii; Tokyo, Japan; Hong Kong and Shanghai, China; Sydney, Australia; Bangkok, Thailand and Singapore. We also hold a ground leasehold interest in certain unimproved real property in San Jose, California, consisting of approximately 40 acres.

We are currently looking to exit from our lease in Shanghai, China, which is an undeveloped property with no IBX hub operations. Additionally, the Company is currently negotiating the exit of a small lease in Ashburn, Virginia, which is also an undeveloped property with no current IBX hub operations.

ITEM 3. LEGAL PROCEEDINGS

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

Under our terminated loan agreement with Wells Fargo, the Company was required to maintain a minimum cash balance at all times or post a letter of credit. As of June 30, 2002, the Company was not in compliance with this requirement. Wells Fargo filed a lawsuit against the company seeking to force the Company to obtain a letter of credit. As part of an agreement with Wells Fargo entered into in January 2003, Equinix made a payment to Wells Fargo of approximately $1.7 million in full satisfaction of all amounts owed to Wells Fargo under the loan agreement. As part of the same agreement, the lawsuit has been dismissed and the loan agreement has been terminated.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

On December 30, 2002, a special meeting of the stockholders of Equinix was held in New York, New York, asking our stockholders to vote for two special proposals. The table below, which is presented on a pre-reverse stock split basis, presents the results of these votes based on 98,892,711 shares outstanding on November 22, 2002, the record date for our special meeting:

	Affirmative Votes	Votes Against	Abstentions	Broker's Non-Votes
Proposal 1—The issuance of shares in connection with the combination, the financing and the senior note exchange	54,051,215	569,823	82,606	0
Proposal 2—The charter merger	54,038,260	548,426	116,958	0

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock is traded on the Nasdaq National Market System under the symbol of EQIX. Our common stock began trading in August 2000. The following table sets forth, for the periods indicated, the low and high bid prices per share for our common stock as reported by the Nasdaq National Market during the last two years. On December 31, 2002, we completed a 32 for 1 reverse stock split of our common stock in order to comply with Nasdaq initial listing requirements. The per share information presented below reflects this reverse stock split.

	Low	High
Fiscal 2002:		
Fourth Fiscal Quarter	$ 5.70	$ 11.52
Third Fiscal Quarter	6.72	18.56
Second Fiscal Quarter	11.20	36.80
First Fiscal Quarter	33.92	108.16
Fiscal 2001:		
Fourth Fiscal Quarter	12.48	107.84
Third Fiscal Quarter	12.16	45.76
Second Fiscal Quarter	19.00	55.36
First Fiscal Quarter	40.00	224.00

As of December 31, 2002, we had issued 8,448,683 shares of our common stock held by approximately 257 stockholders of record.

No dividends have been paid on the common stock. We currently intend to retain all future earnings, if any, for use in our business and do not anticipate paying any cash dividends on our common stock in the foreseeable future. Other than restrictions that are a part of our various debt instruments, there are no contractual legal restrictions on paying dividends.

The effective date of the Registration Statement for our initial public offering, filed on Form S-1 under the Securities Act of 1933 (File No. 333-93749), was August 10, 2000. The class of securities registered was common stock. 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.

During the quarter ended December 31, 2002, we issued and sold the following securities:

1. In October 2002, we amended and restated warrants previously issued to the lenders under the Venture Leasing Loan Agreement in August 1999, as well as issuing new warrants to the lenders, in return for the lenders agreeing to amend the terms of this debt facility. The amended and restated warrants, representing the right to purchase 8,438 shares of our common stock, were repriced from an original per share exercise price of $96.00 to a per share exercise price of $0.32. The new warrants allow for the purchase of an additional 32,188 shares of our common stock with an exercise price of $0.32 per share.
2. In December 2002, we issued a warrant to purchase 965,674 of our Series A or Series A-1 preferred stock with an exercise price of $0.01 per share to STT Communications Ltd. in conjunction with the issuance of a $30.0 million 14% convertible secured note (the "Convertible Secured Note"), with interest payable in kind in the form of additional convertible secured notes (the "PIK Notes"). Both the Convertible Secured Note, as well as the PIK Notes, are convertible into shares of our Series A preferred stock, Series A-1 preferred stock or common stock. On this same date, we also issued to

STT Communications Ltd. a Change of Control Warrant, a Series A Cash Trigger Warrant and a Series B Cash Trigger Warrant (collectively, the "Contingently Exercisable Warrants"). The Contingently Exercisable Warrants allow the holder to purchase shares of our common stock in the event of (i) a change of control for the Change of Control Warrant or (ii) a default under our Credit Facility, as amended, for the Series A Cash Trigger Warrant and Series B Cash Trigger Warrant. The number of shares exercisable under the Contingently Exercisable Warrants are based on formulas contained in each of the individual warrant agreements.

3. In December 2002, we issued 1,084,686 shares of our common stock and 1,868,667 of our Series A preferred stock in consideration for the acquisition of i-STT Pte Ltd, a wholly-owned subsidiary of STT Communications Ltd.

4. In December 2002, we issued 2,416,379 shares of our common stock in consideration for the acquisition of Pihana Pacific, Inc. ("Pihana"). In addition, we issued warrants to purchase 133,442 shares of our common stock with an exercise price of $191.81 per share to certain stockholders of Pihana.

5. In December 2002, we issued 1,857,436 shares of our common stock and $15.2 million of cash in exchange for the retirement of $116.8 million of our 13% senior notes due in 2007. The issuance of these shares was deemed to be exempt from registration under Section 3(a)(9) of the Securities Act.

Unless otherwise noted, the sale of the above securities was determined to be exempt from registration under Section 4(2) of the Securities Act as transactions by an issuer not involving any public offering. In addition, the recipients of securities in each such transaction represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the share certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us.

2001 Supplemental Stock Plan

The Equinix 2001 Supplemental Stock Plan was adopted by the board of directors effective September 26, 2001. The Company has reserved 1,493,961 shares of common stock for issuance under the 2001 Supplemental Stock Plan. Nonstatutory options and restricted stock awards may be granted under the 2001 Supplemental Stock Plan to employees of the Company (or any parent or subsidiary corporation) who are neither officers nor Board members at the time of grant or to consultants. All option grants will have an exercise price per share equal to not less than 85% of the fair market value per share of common stock on the grant date. Each option will vest in installments over the optionee's period of service with the Company. The purchase price for newly issued restricted shares awarded under the 2001 Supplemental Stock Plan may be paid in cash, by promissory note or by the rendering of past or future services. As of February 28, 2003, options covering 104,835 shares of common stock were outstanding under the 2001 Supplemental Stock Plan, 1,381,210 shares remained available for future option grants, and options covering 7,916 shares had been exercised. The options will vest on an accelerated basis in the event the Company is acquired and those options are not assumed or replaced by the acquiring entity. An option or award will become fully exercisable or fully vested if the holder's employment or service is involuntarily terminated within 18 months following the acquisition. The Board may amend or terminate the 2001 Supplemental Stock Plan at any time. The 2001 Supplemental Stock Plan will continue in effect indefinitely unless the board decides to terminate the plan earlier.

Equity Compensation Plan Information

The following information is as of December 31, 2002.

Plan category	(a) Number of securities to be issued upon exercise of outstanding options and rights	(b) Weighted-average exercise price of outstanding options and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	620,986	$ 74.51	3,407,262*
Equity compensation plans not approved by security holders	104,835	$ 12.17	1,381,210
Totals	725,821	$ 65.51	4,788,472

* Includes 35,634 shares from the Employee Stock Purchase Plan.

ITEM 6. SELECTED FINANCIAL DATA

The following statement of operations data for the years ended December 31, 2002, 2001, 2000 and 1999, and for the period from our inception on June 22, 1998 to December 31, 1998, and the balance sheet data as of December 31, 2002, 2001, 2000, 1999 and 1998 have been derived from our audited consolidated financial statements and the related notes to the financial statements. Our historical results are not necessarily indicative of the results to be expected for future periods. The following selected consolidated financial data should be read in conjunction with our consolidated financial statements and the related notes to the consolidated financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this Annual Report on Form 10-K.

	Years ended December 31,				Period from June 22, 1998 (inception) to December 31, 1998
	2002	2001	2000	1999	
	(dollars in thousands, except per share data)				
Statement of Operations Data:					
Revenues	$ 77,188	$ 63,414	$ 13,016	$ 37	$ —
Costs and operating expenses:					
Cost of revenues (includes stock-based compensation of $266, $426, $766, $177 and none for the periods ended December 31, 2002, 2001, 2000, 1999 and 1998, respectively)	104,073	94,889	43,401	3,268	—
Sales and marketing (includes stock-based compensation of $952, $2,830, $6,318, $1,631 and $13 for the periods ended December 31, 2002, 2001, 2000, 1999 and 1998, respectively)	15,247	16,935	20,139	3,949	47
General and administrative (includes stock-based compensation of $5,660, $15,788, $22,809, $4,819 and $151 for the periods ended December 31, 2002, 2001, 2000, 1999 and 1998, respectively)	30,659	58,286	56,585	12,603	902
Restructuring charges	28,885	48,565	—	—	—
Total costs and operating expenses	178,864	218,675	120,125	19,820	949
Loss from operations	(101,676)	(155,261)	(107,109)	(19,783)	(949)
Interest income	998	10,656	16,430	2,138	150
Interest expense	(35,098)	(43,810)	(29,111)	(3,146)	(220)
Gain on debt extinguishment	114,158	—	—	—	—
Net loss	$ (21,618)	$ (188,415)	$(119,790)	$ (20,791)	$ (1,019)
Net loss per share:					
Basic and diluted	$ (7.23)	$ (76.62)	$ (111.23)	$(159.93)	$ (46.32)
Weighted average shares	2,990	2,459	1,077	130	22

	As of December 31,				
	2002	2001	2000	1999	1998
	(dollars in thousands)				
Balance Sheet Data:					
Cash, cash equivalents and short-term investments	$ 41,216	$ 87,721	$ 207,210	$ 222,974	$ 9,165
Accounts receivable, net	9,152	6,909	4,925	178	—
Restricted cash and short-term investments	1,981	28,044	36,855	38,609	—
Property and equipment, net	390,048	325,226	315,380	28,444	482
Construction in progress	—	103,691	94,894	18,312	31
Total assets	492,003	575,054	683,485	319,946	10,001
Debt facilities and capital lease obligations, excluding current portion	3,633	6,344	6,506	8,808	—
Credit facility, excluding current portion	89,529	105,000	—	—	—
Senior notes	28,908	187,882	185,908	183,955	—
Redeemable convertible preferred stock	—	—	—	97,227	10,436
Total stockholders' equity (deficit)	284,194	203,521	375,116	8,472	(846)
Other Financial Data:					
Net cash used in operating activities	(27,509)	(68,854)	(68,073)	(9,908)	(796)
Net cash used in investing activities	(7,528)	(153,014)	(302,158)	(86,270)	(5,265)
Net cash provided by financing activities	16,294	107,799	339,847	295,178	10,226

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following commentary should be read in conjunction with the financial statements and related notes contained elsewhere in this Annual Report on Form 10-K. The discussion contains forward-looking statements that involve risks and uncertainties. These statements relate to future events or our future financial performance. In many cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "intend" or "continue," or the negative of such terms and other comparable terminology. These statements are only predictions. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of a variety of factors, including, but not limited to, those set forth under "Risk Factors" and elsewhere in this Annual Report on Form 10-K.

Overview

Equinix designs, builds and operates IBX hubs where Internet businesses place their equipment and their network facilities in order to interconnect with each other to improve Internet performance. Our IBX hubs and Internet exchange services enable network service providers, enterprises, content providers, managed service providers and other Internet infrastructure companies to directly connect with each other for increased performance. As of December 31, 2002, we had IBX hubs totaling an aggregate of more than one million gross square feet in the Washington, D.C., New York, Dallas, Chicago, Los Angeles, Honolulu and Silicon Valley areas in the United States and in Singapore, Tokyo, Hong Kong, Bangkok and Sydney in the Asia-Pacific region.

Recent Developments. In September 2002, we exercised an option we had purchased in May 2002 and reduced our obligation under our San Jose ground lease by approximately one-half. In connection with the exercise of this option, we permitted the landlord to unconditionally draw down on the full $25.0 million in letters of credit that had been posted as security for our San Jose ground lease and had been classified as restricted cash and short-term investments on the accompanying balance sheet as of December 31, 2001. The Company recorded a restructuring charge of $19.0 million and the remaining portion of the letters of credit, representing approximately $6.0 million, was recorded as prepaid rent, representing the fair value of the lease payments for the 15-month period commencing October 1, 2002 to December 31, 2003. The prepaid rent represents the total payments that would have otherwise been paid during this period for the remaining one-half of the lease. The prepaid rent will be amortized ratably over this 15-month period.

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

i-STT's operations are, and are expected to continue to be, essentially break-even from operating activities. Although Pihana's centers are expected to operate at a loss for approximately 24 months from the closing of the combination, Pihana contributed $33.3 million of cash at closing (approximately $21.7 million, net of working capital), which we believe will be sufficient cash to offset its IBX hubs' projected loss from operations for this period.

In addition, by combining Equinix's, i-STT's and Pihana's businesses, we expect to be able to reduce the annual operating expenses of the combined company by approximately $13.0 million. This will be done through

the elimination of duplicate corporate overhead costs, specifically including the closing of Pihana's corporate headquarters, and a reduction in headcount of the combined companies of nearly 20%, primarily in the general and administrative areas. Furthermore, by using a portion of the cash raised in the transactions to reduce approximately $125.3 million of our debt, we have reduced the annual cash interest expense of the company by approximately $15.8 million.

As of December 31, 2002, we had $41.2 million of cash and cash equivalents. We believe that this cash, together with anticipated positive cash flow from operations commencing by the end of 2003 and projected cost-savings in connection with the combination, will be sufficient to meet our working capital, debt service and corporate overhead requirements associated with our operations for the next twelve months. Although we believe we have sufficient cash to reach cash flow break-even from operating, investing and financing activities, we will continue to look for opportunities to raise additional capital to provide the company with greater operating flexibility.

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

In connection with the combination, financing and the senior note exchange, we amended our credit facility. The most significant terms and conditions of this amendment were:

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

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

Risks and Uncertainties. Since inception, we have experienced operating losses and negative cash flow. As of December 31, 2002 we had an accumulated deficit of $351.6 million and accumulated cash used in operating and construction activities of $691.5 million. Given our limited operating history, we may not generate sufficient revenue to achieve desired profitability. We therefore believe that we will continue to experience operating losses for the foreseeable future, particularly from our newly-acquired operations in the Asia-Pacific region. See "Risk Factors".

Under the terms of the amended credit facility, we must meet certain financial and non-financial covenants. While these covenants were reset consistent with our expected future performance as a combined company, if we do not achieve the intended growth required or are unable to reduce costs to a level to comply with these covenants, we may be required to repay the $91.5 million currently outstanding under this facility. Since we do not have sufficient cash reserves to pay this if an event of default occurs, we may be required to renegotiate with the debt issuers for forbearance, make other financial arrangements or take other actions in order to pay down the

loan. There can be no assurance that such revised covenants will be met, or that we will be able to obtain a forbearance or that replacement financing will be available. In addition, a default in the credit facility will trigger cross-default provisions in our other debt facilities. If the cash flows from operations are not sufficient to support the Company's cash requirements, cost reductions implemented as a result of this could adversely affect the business and our ability to achieve our business objectives.

Critical Accounting Policies and Estimates

The preparation of our financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Management believes the following critical accounting policies, among others, affect its more significant judgments and estimates used in the preparation of its consolidated financial statements:

- Revenue recognition and allowance for doubtful accounts;
- Restructuring charges;
- Accounting for income taxes;
- Contingent liabilities;
- Accounting for property and equipment;
- Impairment of long-lived assets; and
- Consolidation.

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

Revenue is recognized as service is 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 our customary business practice to obtain a signed master sales agreement and sales order prior to recognizing revenue in an arrangement. We assess collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. We do not request collateral from our customers. If we determine that collection of a fee is not reasonably assured, we defer the fee and recognize revenue at the time collection becomes reasonably assured, which is generally upon receipt of cash. In addition, we also maintain an

allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of our 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 for revenue we had previously expected to collect. 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 our allowances.

Our customer base has historically been composed of businesses throughout the U.S. Commencing in fiscal 2003, our revenues will include revenues from our newly-acquired Asia-Pacific operations. We expect that revenues commencing in 2003 will be split approximately 85% in the U.S. and 15% in Asia-Pacific. We perform ongoing credit evaluations of our customers. As of December 31, 2002, one customer, IBM, accounted for 20% of annual revenues and 15% of accounts receivable. As of December 31, 2001, one customer, IBM, accounted for 15% of annual revenues and another customer, SiteSmith, accounted for 10% of accounts receivable. As of December 31, 2000, two customers, IBM and Loudcloud (now known as Opsware), accounted for 12% and 11% of annual revenues, respectively, and two customers, IBM and UUNET, accounted for 19% and 14% of accounts receivable, respectively. No other single customer accounted for greater than 10% of accounts receivable or annual revenues for the periods presented.

During the year ended December 31, 2001, we recognized approximately $200,000 of revenue in relation to equipment received from customers in lieu of cash. This equipment is being used in our operations and was valued based on management's assessment of the fair value of the equipment in relation to external prices for similar equipment.

In February and March 2002, we entered into arrangements with numerous vendors to resell bandwidth, as well as equipment. We began to offer such services in an effort to provide our customers a more fully-integrated services solution. Under the terms of the reseller agreements, we sell the vendors' services or products to our customers and we will contract with the vendor to provide the related services or products. We recognize revenue from such arrangements on a gross basis in accordance with Emerging Issues Task Force ("EITF") Abstract No. 99-19, "Recording Revenue as a Principal versus Net as an Agent". We act as the principal in the transaction as our customer services agreement identifies us as the party responsible for the fulfillment of product/ services to our customers and have full pricing discretion. In the case of products sold under such arrangements, we take title to the products and bear the inventory risk as we have made minimum purchase commitments to various vendors. We have credit risk, as we are responsible for collecting the sales price from a customer, but must pay the amount owed to our suppliers after the suppliers perform, regardless of whether the sales price is fully collected. In addition, we will often determine the required equipment configuration and recommend bandwidth providers from numerous potential suppliers.

While we do not anticipate significant future equipment sales, as noted above, we entered into arrangements with numerous vendors to resell equipment in 2002. For the year ended December 31, 2002, we recognized gross revenue of $2.9 million in connection with these reseller agreements as we acted as the primary obligor in these transactions.

Restructuring Charges. During the third quarter of 2001 and the second, third and fourth quarters of 2002, we recorded restructuring charges, primarily due to our revised European services strategy and exit costs related to excess leaseholds. These restructuring charges were comprised primarily of write-downs and write-offs of assets and accrued unfavorable lease commitments and related lease exit costs. The amount of the restructuring charges we recorded was based on our estimates of how long it would take to successfully negotiate lease terminations for the leaseholds we desired to exit and the related exit costs. In addition, we may incur additional restructuring charges if, in the future, we decide to modify our Asia-Pacific strategy in one or more of the countries we now operate in within the Asia-Pacific region. Should the actual lease exit costs and other accrued restructuring charges exceed the amount accrued, or a new restructuring activity is identified, additional

restructuring charges may be required, which would decrease net income in the period such determination was made. Conversely, if actual lease exit and other restructuring charges are less than the amount accrued, an adjustment to accrued restructuring charges would be required, which would increase income in the period such determination was made. See Recent Accounting Pronouncements for a discussion of "Accounting for Costs Associated with Exit or Disposal Activities."

Accounting for 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 carry-forwards. 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.

We currently have provided for a full valuation allowance against our net deferred tax assets. We have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance. Based on the available objective evidence, management does not believe that the net deferred tax assets will be fully realizable. Should we determine that we would be able to realize our deferred tax assets in the foreseeable future, an adjustment to the deferred tax assets would increase income in the period such determination was made.

Contingent Liabilities. Management estimates exposure on contingent liabilities, such as litigation, based on the best information available at the time of determination. For litigation claims, when management can reasonably estimate the range of loss and when an unfavorable outcome is probable, a contingent liability is recorded. For current legal proceedings, management believes that it has adequate legal defenses and that the ultimate outcome of these actions will not have a material effect on the Company's financial position, results of operations and cashflows. Furthermore, because of the uncertainties as to the outcome of these proceedings and since no range of loss can be estimated at this time, management has determined that no accrual is needed. As additional information becomes available, we will assess the potential liability related to our pending litigation and revise our estimates. Revisions in our estimates of the potential liability could materially impact our results of operation and financial position.

Accounting for Property and Equipment. Property and equipment are stated at original cost. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets, generally two to five years for non-IBX hub equipment and seven to ten years for IBX hub equipment. Leasehold improvements and assets acquired under capital lease are amortized over the shorter of the lease term or the estimated useful life of the asset or improvement. In addition, we have capitalized certain interest costs during the construction phase. Once an IBX hub becomes operational, these capitalized costs are depreciated at the appropriate rate consistent with the estimated useful life of the underlying asset. We have issued numerous warrants to certain fiber carriers and our primary contractor responsible for the construction of many of our IBX hubs. We use the Black-Scholes option-pricing model to value these warrants. The value attributed to these warrants are included in our property and equipment and classified as a leasehold improvement. Amortization of such warrants is included in depreciation expense.

Should management determine that the actual useful lives of our property and equipment placed into service is less than originally anticipated, or if any of our property and equipment was deemed to have incurred an impairment, additional depreciation, an impairment charge would be required, which would decrease net income in the period such determination was made. Conversely, should management determine that the actual useful lives of its property and equipment placed into service was greater than originally anticipated, less depreciation may be required, which would increase net income in the period such determination was made.

Impairment of Long-Lived Assets. We account for the impairment of long-lived assets in accordance with Statement of Financial Accounting Standard ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", which we adopted in fiscal 2002. We evaluate the carrying value of our long-lived assets, consisting primarily of our IBX hubs, whenever certain events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. Such events or circumstances include, but are not limited to, a prolonged industry downturn, a significant decline in our market value, or significant reductions in projected future cash flows. We prepare this analysis by assessing the future net cash flows generated by each IBX hub over their respectful useful lives and comparing this against the carrying value of that IBX hub. Our revenue and cost assumptions used in this analysis are based on numerous factors, including the current revenue and cost performance of each IBX hub, historical growth rates, the remaining space to fill each IBX hub to full capacity relative to the market demand in each of the individual geographic markets of each IBX hub, expected inflation rates and any other available economic indicators and factors that we feel are relevant. If the total of the undiscounted future cash flows is less than the carrying amount of the assets, we write down such assets based on the excess of the carrying amount over the fair value of the assets. Fair value is generally determined by calculating the discounted future cash flows using a discount rate based upon our weighted average cost of capital. Significant judgments and assumptions are required in the forecast of future operating results used in the preparation of the estimated future cash flows, including profit margins, long-term forecasts of the amounts and timing of overall market growth and our percentage of that market, groupings of assets, discount rates and terminal growth rates. In addition, significant estimates and assumptions are required in the determination of the fair value of our tangible long-lived assets, including replacement cost, economic obsolescence, and the value that could be realized in orderly liquidation. Changes in these estimates could have a material adverse effect on the assessment of our long-lived assets, thereby requiring us to write down the assets. Our long-lived assets at December 31, 2002, including property and equipment and goodwill and identifiable intangible assets, totaled $389.9 million and $22.9 million, respectively.

Consolidation. We follow the provisions of SFAS No. 94, "Consolidation of All Majority-Owned Subsidiaries" and EITF Abstract No. 96-16, "Investor's Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights". As a result, all majority-owned subsidiaries are consolidated unless: (1) control is likely to be temporary, or (2) we do not have control. Evidence of such a lack of effective control includes our inability to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

As a result of the combination, we acquired a 60% interest in i-STT Nation Limited, an IBX hub operation in Thailand. However, as a result of certain substantive participating rights granted to minority shareholders, i-STT Nation Limited is not considered a controlled subsidiary and accordingly, it is not consolidated. Accordingly, we account for i-STT Nation Limited as an equity investment using the equity method of accounting. Under the preliminary purchase price allocation, we attributed no value to this investment as i-STT Nation Limited is in the early stages of operations and is not able to generate positive operating cashflow for the foreseeable future. We are continuing to review our strategic alternatives related to i-STT Nation Limited.

Results of Operations

Years Ended December 31, 2002 and 2001

Revenues. We recognized revenues of $77.2 million for the year ended December 31, 2002, as compared to revenues of $63.4 million for the year ended December 31, 2001. Revenues consisted of recurring revenues of $65.3 million and $57.6 million, respectively, for the year ended December 31, 2002 and 2001, primarily from the leasing of cabinet space, power and cross connects. Non-recurring revenues were $11.9 million and $5.8 million, respectively, for the year ended December 31, 2002 and 2001, primarily related to the recognized portion of deferred installation revenue and custom service revenues and one-time settlement fees associated with certain customer right-sizing or contract terminations. One-time settlement fees recognized during the year ended

December 31, 2002 totaled approximately $4.5 million, including a $2.8 million one-time settlement with Qwest received in the third quarter of 2002, and approximately $562,000 for the corresponding period in 2001. Installation and service fees are recognized ratably over the term of the contract. Custom service revenues are recognized upon completion of the services. One-time settlement fees are recognized upon contract termination. In February and March 2002, we entered into equipment reseller agreements with two related party companies. Included within the $11.9 million of non-recurring revenues for the year ended December 31, 2002, were $2.9 million of equipment sales resulting from these two equipment reseller agreements. There were no equipment sales in the year ended December 31, 2001. Excluding equipment sales, we recognized revenues of $74.2 million for the year ended December 31, 2002 as compared to revenues of $63.4 million for the year ended December 31, 2001, a 17% increase.

The period over period growth in revenues was primarily the result of an increase in orders from existing customers and growth in our customer base from 218 customers as of December 31, 2001 to 303 customers as of December 31, 2002 on a pre-merger basis and one-time settlement fees associated with certain customer right-sizing or contract terminations. However, this growth in our customer base is partially offset by a number of our larger customers reducing the size of their contractual commitments to us. We refer to this effort as the "right-sizing" of our larger customer contracts. During the past year, we have proactively worked with certain of our larger customers to right-size their contractual commitments to help them better react to a slowdown in customer demand as a result of weaker economic conditions. Although these right-sizing efforts often result in a reduction in the number of cabinets these customers are obligated to pay for, many of these right-sizing efforts have resulted in the customer extending the term for the remaining cabinets. As a result, although the short-term recurring revenues from such customers are reduced, the overall contract value at times remains intact and the relationship with the customer is preserved, if not improved. As of December 31, 2002, we had successfully completed the right-sizing of most of our customers that had more than 100 cabinets booked, a booking level that represents our larger customers. These right-sizing efforts have, over the past several quarters, been netted out against our new customer cabinet bookings, limiting our overall revenue growth during the past five quarters.

Commencing in fiscal 2003, our revenues will include revenues from our newly-acquired Asia-Pacific operations. We expect that revenues commencing in 2003 will be split approximately 85% in the U.S. and 15% in Asia-Pacific.

Cost of Revenues. Cost of revenues increased to $104.1 million for the year ended December 31, 2002 from $94.9 million for the year ended December 31, 2001. These amounts included $47.8 million and $40.0 million, respectively, of depreciation expense and $266,000 and $426,000, respectively, of stock-based compensation expense. In addition to depreciation and stock-based compensation, cost of revenues consists primarily of rental payments for our leased IBX hubs, site employees' salaries and benefits, utility costs, power and redundancy system engineering support services and related costs and security services. Furthermore, cost of revenues for the year ended December 31, 2002 included the costs associated with $2.9 million in equipment sales we recorded, which was approximately $2.8 million. Excluding depreciation, stock-based compensation expense and the costs of equipment sales, cash cost of revenues decreased slightly period over period to $53.1 million for the year ended December 31, 2002 from $54.4 million for the year ended December 31, 2001, a 2% decrease.

Cash cost of revenues for the year ended December 31, 2001 included $5.0 million in costs related to our European expansion plans. Due to the restructuring charge that we recorded in the third quarter of 2001, these costs were not in our cash cost of revenues for the year ended December 31, 2002; however, these savings were partially offset by the additional costs incurred of $3.7 million from (a) our newest and largest IBX hub opened during the first quarter of 2002 in the New York metropolitan area and (b) the costs associated with the ramp-up of our existing IBX hubs. In September 2002, we exercised an option to reduce the monthly operating costs under the San Jose ground lease by approximately one-half commencing October 2002, which resulted in savings of approximately $1.1 million as compared to the prior year. We anticipate that the costs associated with the continued ramp-up of our IBX hubs and the additional costs associated with some of our new services, such as

bandwidth, will continue to increase in the foreseeable future; however, the cost savings resulting from the elimination of approximately half of the San Jose ground lease costs, which commenced in October 2002, should offset most of these increases for the foreseeable future in the U.S. However, commencing in fiscal 2003, our cost of revenues will include the cost of revenues associated with our Asia-Pacific operations. We expect that these additional costs will be substantial and will result in a significant increase in our total cost of revenues.

Sales and Marketing. Sales and marketing expenses decreased to $15.2 million for the year ended December 31, 2002 from $16.9 million for the year ended December 31, 2001. These amounts included $952,000 and $2.8 million, respectively, of stock-based compensation expense. In addition, we recorded $2.3 million in bad debt expense for the year ended December 31, 2002, as compared to $477,000 recorded in the prior year. This substantial increase in bad debt expense was primarily the result of full provisions against aged receivables associated with two customers, Teleglobe and WorldCom, both of which filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in 2002. Excluding stock-based compensation and bad debt expense, cash sales and marketing costs decreased to $12.0 million for the year ended December 31, 2002 from $13.6 million for the year ended December 31, 2001, a 12% decrease. Cash sales and marketing expenses consist primarily of compensation and related costs for sales and marketing personnel, sales commissions, marketing programs, public relations, promotional materials and travel. The decrease in sales and marketing expenses is the result of several cost saving initiatives that we undertook, including staff reductions of approximately 25% during 2001 that resulted in approximately $2.6 million in annual savings in sales and marketing costs and an overall decrease in discretionary spending. We continue to closely monitor our spending in all areas as a result of the current market conditions. However, commencing in fiscal 2003, our sales and marketing expenses will include the sales and marketing expenses associated with our Asia-Pacific operations. We expect that these additional costs will be substantial and result in a significant increase in our sales and marketing expenses.

General and Administrative. General and administrative expenses decreased to $30.7 million for the year ended December 31, 2002 from $58.3 million for the year ended December 31, 2001. These amounts included $5.7 million and $15.8 million, respectively, of stock-based compensation expense and $6.2 million and $9.6 million, respectively, of depreciation expense, resulting in $14.1 million or 43% decrease in period over period cash spending. Cash general and administrative expenses consist primarily of salaries and related expenses, accounting, legal and administrative expenses, professional service fees and other general corporate expenses. The significant decrease in general and administrative expenses was primarily the result of several cost saving initiatives that we undertook, including staff reductions of approximately 25% during 2001 that resulted in approximately $4.9 million in annual savings in general and administrative costs and an overall decrease in discretionary spending. We continue to closely monitor our spending as a result of the current market conditions. However, commencing in fiscal 2003, our general and administrative expenses will include the general and administrative expenses associated with our Asia-Pacific operations. We expect that these additional costs will be substantial and result in a significant increase in our general and administrative expenses.

Restructuring Charges. During the year ended December 31, 2002, we recorded restructuring charges of $28.9 million. The restructuring charges consisted of (a) a $5.0 million option fee paid in May 2002 related to the amendment of our approximately 80 acre ground lease in San Jose, California from which we subsequently elected to exercise the option to permanently exclude 40 acres commencing October 1, 2002; (b) a write-off of property and equipment of $2.6 million, primarily leasehold improvements and some equipment, located in two unnecessary U.S. IBX expansion and headquarter office space operating leaseholds we had decided to exit and that do not currently provide any ongoing benefit; (c) a write-off of one U.S. letters of credit totaling $250,000 related to one U.S. operating leasehold we had committed to exit; (d) an accrual of $1.0 million related to the remaining estimated European exit costs; (e) an accrual of $925,000 in severance charges related to a less than 10% reduction in workforce in an effort to reduce the cost structure of our corporate headquarter function that will result in approximately $2.8 million in annual savings; (f) an accrual of $115,000 related to additional U.S. leasehold exit costs and (g) a partial write-off of two letters of credit totaling $19.0 million associated with the exercise in September 2002 of our option to permanently terminate approximately one-half of our lease obligations under the San Jose ground lease.

During the quarter ended September 30, 2001, the Company took a restructuring charge of $48.6 million consisting of $45.3 million related to a revised European services strategy, $2.0 million for certain anticipated excess U.S. leasehold exit costs and $1.3 million related to a reduction in workforce, primarily in selling, general and administrative functions at the Company's headquarters. During third quarter 2001, the Company decided to partner with another Internet exchange company in Europe rather than build and operate its own centers outside of the U.S. As a result, the Company i) recorded a write-down of its European construction in progress assets to their net realizable value and recorded a charge totaling $29.3 million, ii) accrued certain leasehold exit costs for its European leasehold interests in the amount of $6.4 million, iii) wrote-off its European letters of credit that secured the European leasehold interests in the amount of $8.6 million and iv) accrued various legal, storage and other costs totaling $1.0 million to facilitate this change in strategy. In addition, the Company incurred a $2.0 million restructuring charge for leasehold exit costs associated with certain excess U.S. leases and a $1.3 million restructuring charge related to an approximate 15% reduction in workforce in an effort to streamline and reduce the cost structure of the Company's headquarter function.

As of December 31, 2002, a total restructuring reserve of $1.7 million remained outstanding for all of the above accrued but unpaid restructuring charges. We began to realize the cost savings benefits resulting from the partial San Jose ground lease termination in cost of revenues during October 2002.

Interest Income. Interest income decreased to $998,000 from $10.7 million for the year ended December 31, 2002 and 2001, respectively. Interest income decreased due to lower cash, cash equivalent and short-term investment balances held in interest bearing accounts and lower interest rates received on those invested balances.

Interest Expense. Interest expense decreased to $35.1 million from $43.8 million for the year ended December 31, 2002 and 2001, respectively. The decrease in interest expense was attributable to the retirement of $52.8 million of our 13% senior notes during the first half of 2002 and to the decline in both the principal due and the interest rates associated with our credit facility.

Gain on Debt Extinguishment. During the first half of 2002, we retired $52.8 million of our senior notes in exchange for approximately 500,000 shares of our common stock and approximately $2.5 million of cash. On December 31, 2002, we retired an additional $116.8 million of our senior notes in exchange for approximately 1.9 million shares of our common stock and approximately $15.2 million of cash. As a result of these transactions, we recognized a $114.2 million net gain on debt extinguishment during 2002, after deducting transaction costs, interest waived and allocation of unamortized debt issuance costs and debt discount.

Years ended December 31, 2001 and December 31, 2000

Revenues. Revenues increased from $13.0 million for the year ended December 31, 2000 to $63.4 million for the year ended December 31, 2001. Revenues consist of recurring revenues of $57.6 million for 2001, versus $11.6 million for 2000, primarily from the leasing of cabinet space, and non-recurring revenues of $5.8 million for 2001, versus $1.4 million for 2000, related to the recognized portion of deferred installation revenue and custom service revenues. Installation fees are recognized ratably over the term of the contract. Custom service revenues are recognized upon completion of the services. Revenues increased year over year because we had more IBX hubs open and operational during 2001 than we had during 2000. We expect revenues to continue to increase as our customer base continues to grow and as a result of opening our newest and largest IBX hub in the New York metropolitan area during the first quarter of 2002.

Cost of Revenues. Cost of revenues increased from $43.4 million for the year ended December 31, 2000 to $94.9 million for the year ended December 31, 2001. These amounts include depreciation and amortization expense of $11.5 million and $40.0 million, respectively. In addition to depreciation and amortization, cost of revenues consists primarily of rental payments for our leased IBX hubs, site employees' salaries and benefits, utility costs, power and redundancy system engineering support services and related costs and security services.

The increase in cost of revenues was due to additional leases and increased expenses related to our opening of additional IBX hubs. During the quarter ended September 30, 2001, we revised our European services strategy that included exiting our European leases and various U.S. leaseholds. These actions reduced the cost of revenues commencing in fourth quarter 2001; however, these savings have been offset in part by increased cost of revenues associated with the opening of the New York metropolitan IBX hub during the first quarter of 2002, including related depreciation and amortization expense, and additional cost of revenues related to our existing IBX hubs as our installed base of customers grows.

Sales and Marketing. Sales and marketing expenses decreased from $20.1 million for the year ended December 31, 2000 to $16.9 million for the year ended December 31, 2001; however, these amounts include stock-based compensation expense of $6.3 million and $2.8 million, respectively, resulting in a 2% increase in period over period cash spending. Sales and marketing expenses consist primarily of compensation and related costs for the sales and marketing personnel, sales commissions, marketing programs, public relations, promotional materials and travel. The increase in sales and marketing expense resulted from the addition of personnel in our sales and marketing organizations during the first half of 2001, reflecting our increased selling effort and our initiatives to develop market awareness. During the quarter ended September 30, 2001, we incurred a $1.3 million restructuring charge related to a reduction in workforce that included some sales and marketing staff. In addition, we are closely monitoring our discretionary marketing costs as the result of current market conditions.

General and Administrative. General and administrative expenses increased from $56.6 million for the year ended December 31, 2000 to $58.3 million for the year ended December 31, 2001. These amounts include stock-based compensation expense of $22.8 million and $15.8 million, respectively, and depreciation and amortization expense of $3.3 million and $9.6 million, respectively, resulting in an 8% increase in period over period cash spending. General and administrative expenses consist primarily of salaries and related expenses, accounting, legal and administrative expenses, professional service fees and other general corporate expenses. The increase in general and administrative expenses was primarily the result of increased expenses associated with additional hiring of personnel in management, finance and administration, as well as other related costs associated with supporting our expansion, particularly during the first quarter of 2001. During the second and third quarters of 2001, we implemented several cost-savings initiatives, including some staff reductions and an overall decrease in discretionary spending.

Restructuring Charge. During the quarter ended September 30, 2001, we took a restructuring charge of $48.6 million consisting of $45.3 million related to its revised European services strategy, $2.0 million for certain anticipated excess U.S. leasehold exit costs and $1.3 million related to a reduction in workforce, primarily in selling, general and administrative functions at our corporate headquarters. During third quarter 2001, we decided to partner with other Internet exchange companies in Europe rather than build and operate our own centers outside of the U.S. As a result, we (a) recorded a write-down of our European construction in progress assets to their net realizable value and recorded a charge totaling $29.3 million, (b) accrued certain leasehold exit costs for our European leasehold interests in the amount of $6.4 million, (c) wrote-off our European letters of credit that secured the European leasehold interests in the amount of $8.6 million and (d) accrued various legal, storage and other costs totaling $1.0 million to facilitate this change in strategy. We experienced some cost savings benefits from this restructuring charge during the fourth quarter of 2001, particularly in cost of revenues; however, these cost-savings were partially offset by the increased operating costs of the New York metropolitan area IBX hub beginning in the first quarter of 2002. In addition, we incurred a $2.0 million restructuring charge for leasehold exit costs associated with certain excess U.S. leases and a $1.3 million restructuring charge related to an approximate 15% reduction in workforce in an effort to reduce the cost structure of our corporate headquarter functions. We began to realize the cost savings benefits of the $2.0 million U.S. lease restructuring charge and $1.3 million workforce reduction restructuring charge commencing in the fourth quarter of 2001.

Interest Income. Interest income decreased from $16.4 million for the year ended December 31, 2000 to $10.7 million for the year ended December 31, 2001 as a result of a decline in short-term interest rates and reduced cash, cash equivalent and short-term investments.

Interest Expense. Interest expense increased from $29.1 million for the year ended December 31, 2000 to $43.8 million for the year ended December 31, 2001. The increase in interest expense was attributed to interest related to an increase in our debt facilities and capital lease obligations, including the credit facility, and amortization of the credit facility and other debt facilities and capital lease obligations debt issuance costs and discounts.

Liquidity and Capital Resources

Since inception, we have financed our operations and capital requirements primarily through the issuance of senior notes, the private sale of preferred stock, our initial public offering, our credit facility, which was later amended, our convertible secured notes, our combination with i-STT and Pihana and various types of debt facilities and capital lease obligations, for aggregate gross proceeds of approximately $909.2 million. As of December 31, 2001, our total indebtedness from senior notes, our credit facility and other debt facilities and capital lease obligations was $319.2 million. As of December 31, 2002, this amount was reduced to $161.6 million, including our $30.0 million convertible secured notes issued in December 2002 that do not require cash interest payments.

As of December 31, 2002, our principal source of liquidity was approximately $41.2 million in cash and cash equivalents.

Uses of Cash

Net cash used in our operating activities was $27.5 million, $68.9 million and $68.1 million for the years ended December 31, 2002, 2001 and 2000, respectively. We used cash primarily to fund our net loss, including cash interest payments on senior notes and our credit facility.

Net cash used in investing activities was $7.5 million, $153.0 million and $302.2 million for the years ended December 31, 2002, 2001 and 2000, respectively. Net cash used in investing activities was primarily attributable to the construction of our IBX hubs and the purchase of restricted cash and short-term investments. The amount of cash used in investing activities has decreased substantially as we have now completed our IBX hub rollout plan.

Net cash generated by financing activities was $16.9 million, $107.8 million and $339.8 million for the years ended December 31, 2002, 2001 and 2000, respectively. Net cash generated by financing activities during the year ended December 31, 2002 was primarily attributable to the cash acquired in the acquisitions of i-STT and Pihana and proceeds from our $30.0 million convertible secured notes, offset by payments of $17.7 million used to retire approximately $169.5 million of our senior notes and the costs associated with the exchange of the senior notes and repayments under our credit facility of $13.5 million. Net cash generated by financing activities during the year ended December 31, 2001 was primarily attributable to the net $105.0 million draw down under our credit facility. Net cash generated by financing activities during the year ended December 31, 2000 was primarily attributable to the proceeds from the initial public offering of our common stock and the issuance of Series C redeemable convertible preferred stock.

Debt Obligations

As of December 31, 2002, our total indebtedness from our senior notes, credit facility, convertible secured notes and debt facilities and capital lease obligations was $161.6 million, as follows:

Senior Notes. In December 1999, we issued $200.0 million aggregate principal amount of 13% senior notes. Our aggregate net proceeds of this offering were $193.4 million, net of offering expenses. During the first half of 2002, we retired $52.8 million of the senior notes in exchange for approximately 500,000 shares of common stock and approximately $2.5 million of cash. On December 31, 2002, we retired an additional $116.8 million of the senior notes in exchange for approximately 1.9 million shares of our common stock and approximately $15.2 million of cash. As of December 31, 2002, a total of $30.5 million of senior note principal remains outstanding.

Credit Facility. In December 2000, we entered into the credit facility with a syndicate of lenders under which, subject to our compliance with a number of financial ratios and covenants, we were permitted to borrow up to $150.0 million. As of September 30, 2001, we had borrowed the entire $150.0 million under this facility. In October 2001, in conjunction with the repayment of $50.0 million, we amended the credit facility to decrease total borrowing allowed to $125.0 million and to reset certain financial covenants to more accurately reflect market conditions. As of September 30, 2002, a total of $100.0 million was outstanding under the credit facility. The credit facility required us to maintain specific financial ratios and comply with quarterly, and in some circumstances, monthly covenants requiring us to, among other things, achieve specific revenue targets at levels significantly above historical revenues, maintain certain minimum cash balances and limit our EBITDA losses. As of September 30, 2002, we were not in compliance with several of these provisions, including the revenue covenant. In August and November 2002, the senior lenders provided us with various waivers and further amended the credit facility. Under the August 2002 amendment, we agreed to prepay $5.0 million and agreed to a reduction in the total borrowing allowed under the credit facility to $100.0 million (permanently eliminating the $20.0 million which was previously available for borrowing). The November 2002 amendment primarily provided the company with some additional time and flexibility in order to complete the senior note exchange. In connection with the combination, financing and completed senior note exchange, we entered into a further amendment to the credit facility. The most significant terms and conditions of this amendment were:

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

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

Other Debt Facilities and Capital Lease Obligations. In May 1999, we entered into a master lease agreement with Comdisco in the amount of $1.0 million. This master lease agreement was increased by addendum in August 1999 by $5.0 million. This agreement bears interest at either 7.5% or 8.5% and is repayable over 42 months in equal monthly payments with a final interest payment equal to 15% of the advance amounts due on maturity. As of December 31, 2002, these capital lease financings were fully drawn and $1.9 million remained outstanding.

In August 1999, we entered into a loan agreement with Venture Lending and Leasing in the amount of $10.0 million and fully drew down on this amount. This loan agreement bears interest at 8.5% and was repayable over 42 months in equal monthly payments with a final interest payment equal to 15% of the advance amounts due on maturity. In October 2002, we amended the loan agreement to secure certain short-term cash deferment benefits. Under the terms of this amendment, we extended the maturity of the loan by 24 months and amortized the remaining principal balance and related balloon interest payment over this amended period ending March 1, 2005; and in exchange, the Company issued new warrants and re-priced their original warrants. As of December 31, 2002, principal of $1.3 million remained outstanding.

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

In June 2001, we entered into a loan agreement with Heller Financial Leasing in the amount of $5.0 million and fully drew down on this amount. This loan agreement bears interest at 13.0% and is repayable over 36 months. In August 2002, we amended this loan to secure certain short-term cash deferment. Under the amended terms of this loan agreement, we extended the maturity of the loan by nine months. Commencing September 2002, we began to benefit from the reduction in monthly payments over the following 14 months thereby deferring approximately $1.2 million of principal payments. Commencing November 2003, the deferred principal payments will be repaid over the remaining 17 months of the loan ending March 2005. As of December 31, 2002, principal of $3.3 million remained outstanding.

In December 2002, in conjunction with our merger with Pihana, we acquired multiple capital leases with Orix. The original amount financed was approximately $3.5 million. These capital lease arrangements bear interest at an average rate of 6.4% per annum and are repayable over 30 months. As of December 31, 2002, principal of $1.5 million remained outstanding.

Debt Maturities and Operating Lease Commitments

We lease our IBX hubs and certain equipment under non-cancelable operating lease agreements expiring through 2020. The following represents the minimum future operating lease payments for these commitments, as well as the combined aggregate maturities for all of our debt as of December 31, 2002 (in thousands):

	Debt facilities & capital lease obligations	Credit facility	Senior notes	Convertible secured notes	Operating leases	Total
2003	$ 5,852	$ 1,981	$ —	$ —	$ 20,913	$ 28,746
2004	3,019	6,981	—	—	23,075	33,075
2005	729	82,548	—	—	26,134	109,411
2006	—	—	—	—	27,189	27,189
2007	—	—	30,475	30,000	28,050	88,525
2008 and thereafter	—	—	—	—	206,840	206,840
	$ 9,600	$91,510	$30,475	$ 30,000	$ 332,201	$493,786

We believe that our cash on hand, together with anticipated positive cash flow from operations commencing by the end of 2003 and projected cost-savings in connection with the combination, will be sufficient to meet our working capital, debt service and corporate overhead requirements associated with our operations for the next twelve months. Although we believe we have sufficient cash to reach cash flow break-even from operating, investing and financing activities, we will continue to look for opportunities to raise additional capital to provide the company with greater operating flexibility.

RISK FACTORS

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

Risks Related to Our Business

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

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

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

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

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

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

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

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

We expect our operating results to fluctuate.

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

- changes in general economic conditions and specific market conditions in the telecommunications and Internet industries;

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

Any of the foregoing factors, or other factors discussed elsewhere in this report, could have a material adverse effect on our business, results of operations, and financial condition. Although Equinix, i-STT and Pihana have experienced growth in revenues in recent quarters, this growth rate is not necessarily indicative of future operating results. It is possible that the combined company may never achieve profitability on a quarterly or annual basis. In addition, a relatively large portion of our expenses are fixed in the short-term, particularly with respect to lease and personnel expenses, depreciation and amortization, and interest expenses. Therefore, our results of operations are particularly sensitive to fluctuations in revenues. As such, comparisons to prior reporting periods should not be relied upon as indications of the combined company's future performance. In addition, our operating results in one or more future quarters may fail to meet the expectations of securities analysts or investors. If this occurs, we could experience an immediate and significant decline in the trading price of its stock.

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

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

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

- the difficulties and expenses in combining the operations, technology and computer systems and software applications of the three companies;

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

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

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

In 2002, our sales outside North America represented less than 1% of our revenues, i-STT's sales outside North America represented approximately 100% of its revenues and Pihana's sales outside North America represented approximately 45% of its revenues. 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, for which hedging activities may not adequately protect us. Where our prices are denominated in U.S. dollars, our sales could be adversely affected by declines in foreign currencies relative to the U.S. dollar, thereby making our products more expensive in local currencies. Our international operations are generally subject to a number of additional risks, including:

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

To date, the majority of Equinix's revenues and costs have been denominated in U.S. dollars; the majority of i-STT's revenues and costs have been denominated in Singapore dollars and the majority of Pihana's revenues and costs have been denominated in U.S. dollars, Japanese yen and Australian and Singapore dollars. However,

we expect that in the future an increasing portion of revenues and costs will be denominated in foreign currencies. Although the combined company may undertake foreign exchange hedging transactions to reduce foreign currency transaction exposure, it does not currently intend to eliminate all foreign currency transaction exposure.

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

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

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

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

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

We agreed to a covenant in the combination agreement (which we refer to as the FIRPTA covenant) that we would use all commercially reasonable efforts to ensure that at all times from and after the closing of the combination until such time as neither STT Communications nor its affiliates hold our capital stock or debt securities (or the capital stock received upon conversion of the debt securities) received by STT Communications in connection with the consummation of the transactions contemplated in the combination agreement, none of our capital stock issued to STT Communications constitute "United States real property interests" within the meaning of Section 897(c) of the Internal Revenue Code of 1986, which we call the Code. Under Section 897(c) of the Code, our capital stock issued to STT Communications would generally constitute "United States real property interests" at such point in time that the fair market value of the "United States real property interests" owned by us equals or exceeds 50% of the sum of the aggregate fair market values of (a) our "United States real property interests," (b) our interests in real property located outside the U.S., and (c) any other assets held by us which are used or held for use in our trade or business. Given that we currently own significant amounts of "United States real property interests," we may be limited with respect to the business opportunities we may pursue, particularly if the business opportunities would increase the amounts of "United States real property interests" owned by us or decrease the amount of other assets owned by us. In addition, pursuant to the FIRPTA covenant we may be forced to take commercially reasonable proactive steps to ensure our compliance with the FIRPTA covenant, including, but not limited to, (a) a sale-leaseback transaction with respect to all real property interests, or (b) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all of our outstanding stock (this reorganization would require the submission of that transaction to our stockholders for their approval and the consummation of that exchange).

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

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

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

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

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

Our total debt consists primarily of the following:

- a total of $30.5 million principal amount of senior notes;
- a total of $91.5 million principal amount of loans under our credit facility;
- a total of $30.0 million of a newly issued convertible secured note; and
- approximately $9.6 million of other outstanding debt facilities and capital lease obligations.

Under the terms of the combination agreement, we are contractually obligated to use our reasonable best efforts to obtain the release of STT Communications from a bank guarantee associated with i-STT's unconsolidated Thailand joint venture. Such efforts may include i-STT assuming such guarantee if it is commercially reasonable to do so. Currently, we have not assumed such guarantee and accordingly, no liability has been recorded for this potential liability as of December 31, 2002. This guarantee is for a Thai baht 260,000,000 bank loan (approximately $6,032,000 as translated using effective exchange rates at December 31, 2002), of which Thai baht 54,900,000 is currently outstanding as of December 31, 2002 (approximately $1,274,000 as translated using effective exchange rates at December 31, 2002).

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

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

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

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

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

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

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

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

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

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

We issued a large number of shares of our capital stock to the former Pihana stockholders, STT Communications, and holders of our senior notes in connection with the combination, financing and senior note exchange. The shares of common stock issued in the senior note exchange may be sold into the public market immediately following the closing of the exchange. The shares of common stock issued in connection with the combination will be registered for resale within six months. Subject to the restrictions described in this proxy statement, the senior notes and warrants issued in connection with the financing are immediately convertible or exercisable into shares of common stock and the underlying shares of common stock may be registered for resale

within six months of the closing. Sales of a substantial number of shares of our common stock by these parties within any narrow period of time could cause our stock price to fall. In addition, the issuance of the additional shares of our common stock as a result of these transactions will reduce our earnings per share, if any. This dilution could reduce the market price of our common stock unless and until we achieve revenue growth or cost savings and other business economies sufficient to offset the effect of this issuance. There can be no assurance that we will achieve revenue growth, cost savings or other business economies.

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

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

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

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

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

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

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

We may also face competition from persons seeking to replicate our IBX concept. Competitors may operate more successfully or form alliances to acquire significant market share. Furthermore, enterprises that have already invested substantial resources in peering arrangements may be reluctant or slow to adopt our approach

that may replace, limit or compete with their existing systems. In addition, other companies may be able to attract the same potential customers that we are targeting. Once customers are located in competitors' facilities, it will be extremely difficult to convince them to relocate to our IBX hubs.

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

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

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

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

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

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

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

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

We have service level commitment obligations to certain of our customers. As a result, service interruptions or significant equipment damage in our IBX hubs, whether or not within our control, could result in service level

commitments to these customers. Our liability insurance may not be adequate to cover those expenses. In addition, any loss of services, equipment damage or inability to meet our service level commitment obligations, particularly in the early stage of our development, could reduce the confidence of our customers and could consequently impair our ability to obtain and retain customers, which would adversely affect both our ability to generate revenues and our operating results.

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

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

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

Problems at one or more of our IBX hubs, whether or not within our control, could result in service interruptions or significant equipment damage. In the past, a limited number of our customers have experienced temporary losses of power and failure of our services levels on products such as bandwidth connectivity. If we incur significant financial commitments to our customers in connection with a loss of power, or our failure to meet other service level commitment obligations, our liability insurance may not be adequate to cover those expenses. In addition, any loss of services, equipment damage or inability to meet our service level commitment obligations, particularly in the early stage of our development, could reduce the confidence of our customers and could consequently impair our ability to obtain and retain customers, which would adversely affect both our ability to generate revenues and our operating results.

Furthermore, we will be dependent upon internet service providers, telecommunications carriers and other website operators in the U.S., Asia and elsewhere, some of which may have experienced significant system failures and electrical outages in the past. Users of our services may in the future experience difficulties due to system failures unrelated to our systems and services. If for any reason, these providers failed to provide the required services, our business, financial condition and results of operations could be materially adversely impacted.

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

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

To the extent a failure of our physical infrastructure, services, or services provided by service providers results in decreased revenues, we may not be able to comply with covenants in our credit facility. If we are

unable to comply with covenants in our credit facility, the banks may require repayment of all outstanding amounts, and we do not have sufficient cash reserves to repay those amounts.

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

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

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

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

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

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

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

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

Risks related to our Industry

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

Acceptance and use of the Internet may not continue to develop at historical rates and a sufficiently broad base of consumers may not adopt or continue to use the Internet and other online services as a medium of

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

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

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

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

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

Recent Accounting Pronouncements

In May 2002, the FASB issued SFAS No. 145, “Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13, and Technical Corrections” (“SFAS 145”). SFAS 145 rescinds the automatic treatment of gains or losses from extinguishment of debt as extraordinary unless they meet the criteria for extraordinary items as outlined in APB Opinion No. 30, “Reporting the Results of Operations, Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions.” In addition, SFAS 145 also requires sale-leaseback accounting for certain lease modifications that have economic effects that are similar to sale-leaseback transactions and makes various technical corrections to existing pronouncements. SFAS 145 is effective for us for all financial statements issued in fiscal 2003; however, as allowed under the provisions of SFAS 145, we decided to early adopt SFAS 145 in relation to extinguishments of debt for the year ended December 31, 2002. As a result of the early adoption of SFAS 145, the gains on debt extinguishment that we realized in 2002 from the extinguishment of senior notes during the year were not reported as extraordinary transactions.

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

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 requires a guarantor to recognize a liability for obligations it has undertaken in relation to the issuance of a guarantee in addition to providing additional disclosures on such guarantees. The liability would be recorded at fair value on the date the guarantee is issued. The disclosure requirements of FIN 45 are effective for the interim and annual periods ending after December 15, 2002. The recognition and measurement provisions of FIN 45 are effective after December 31, 2002. As of December 31, 2002, the Company adopted the disclosure requirements of FIN 45. We are currently evaluating the effects of the liability measurement provisions of FIN 45 on our financial statements commencing in fiscal 2003.

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

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation— Transition and Disclosure—an Amendment of SFAS No. 123" ("SFAS 148"). SFAS 148 encourages the adoption of the accounting provisions of SFAS 123 and requires additional disclosure, including in interim financial statements, for all companies regardless of whether or not they adopt the accounting provisions of SFAS 123. This statement is effective for our fiscal 2002 Annual Report on Form 10-K and the new interim disclosure provisions are effective for the first quarter of 2004.

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

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market Risk

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

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

Interest Rate Risk

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

An immediate 10% increase or decrease in current interest rates would furthermore not have a material impact to our debt obligations due to the fixed nature of our long-term debt obligations, except for the interest expense associated with our credit facility, which bears interest at floating rates, plus applicable margins, based on either the prime rate or LIBOR. As of December 31, 2002, the credit facility had an effective interest rate of 6.21%. The fair market value of our long-term fixed interest rate debt is subject to interest rate risk. Generally, the fair market value of fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. These interest rate changes may affect the fair market value of the fixed interest rate debt but does not impact our earnings or cash flows.

The fair market value of our senior notes is based on quoted market prices. The estimated fair value of our senior notes as of December 31, 2002 was approximately $4.6 million.

Foreign Currency Risk

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

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

Commodity Price Risk

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

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and supplementary data required by this Item 8 are listed in Item 15(a)(1) and begin at page F-1 of this Report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

There is no disclosure to report pursuant to Item 9.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information regarding our Directors and Executive Officers is incorporated herein by reference from the section entitled "Election of Directors" of our definitive Proxy Statement (the "Proxy Statement") to be filed pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, for our 2003 Annual Meeting of Stockholders. The Proxy Statement is anticipated to be filed within 120 days after the end of our fiscal year ended December 31, 2002.

ITEM 11. EXECUTIVE COMPENSATION

Information regarding executive compensation is incorporated herein by reference from the section entitled "Executive Compensation and Related Information" of the Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information regarding security ownership of certain beneficial owners and management is incorporated herein by reference from the section entitled "Security Ownership of Certain Beneficial Owners and Management" of the Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information regarding certain relationships and related transactions is incorporated herein by reference from the section entitled "Certain Relationships and Related Transactions" of the Proxy Statement.

ITEM 14. CONTROLS AND PROCEDURES

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

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULE, AND REPORTS ON FORM 8-K

(a)(1) Financial Statements:

(a)(2) All schedules have been omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

(a)(3) Exhibits:

Exhibit Number	Description of Document
2.1**********	Combination Agreement, dated as of October 2,2002, by and among Equinix, Inc., Eagle Panther Acquisition Corp., Eagle Jaguar Acquisition Corp., i-STT Pte Ltd, STT Communications Ltd., Pihana Pacific, Inc. and Jane Dietze, as representative of the stockholders of Pihana Pacific, Inc.
3.1********	Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.
3.2	Bylaws of the Registrant.
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2**	Form of Registrant's Common Stock certificate.
4.6*	Common Stock Registration Rights Agreement (See Exhibit 10.3).
4.9*	Amended and Restated Investors' Rights Agreement (See Exhibit 10.6).
4.10	Registration Rights Agreement (See Exhibit 10.75).
10.1*	Indenture, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as trustee).
10.2*	Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).
10.3*	Common Stock Registration Rights Agreement, dated as of December 1, 1999, by and among the Registrant, Benchmark Capital Partners II, L.P., Cisco Systems, Inc., Microsoft Corporation, ePartners, Albert M. Avery, IV and Jay S. Adelson (as investors), and the Initial Purchasers.
10.4*	Registration Rights Agreement, dated as of December 1, 1999, by and among the Registrant and the Initial Purchasers.
10.5*	Form of Indemnification Agreement between the Registrant and each of its officers and directors.
10.6*	Amended and Restated Investors' Rights Agreement, dated as of May 8, 2000, by and between the Registrant, the Series A Purchasers, the Series B Purchasers, the Series C Purchasers and members of the Registrant's management.
10.8*	The Registrant's 1998 Stock Option Plan.
10.9*+	Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.
10.10*+	Lease Agreement with Market Halsey Urban Renewal, LLC, dated as of May 3, 1999.
10.11*+	Lease Agreement with Laing Beaumeade, dated as of November 18, 1998.

Exhibit Number	Description of Document
10.12*+	Lease Agreement with Rose Ventures II, Inc., dated as of June 10, 1999.
10.13*+	Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 8, 1999.
10.14*+	First Amendment to Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of October 28, 1999.
10.15*+	Lease Agreement with Nexcomm Asset Acquisition I, L.P., dated as of January 21, 2000.
10.16*+	Lease Agreement with TrizecHahn Centers, Inc. (dba TrizecHahn Beaumeade Corporate Management), dated as of December 15, 1999.
10.17*	Lease Agreement with ARE-2425/2400/2450 Garcia Bayshore LLC, dated as of January 28, 2000.
10.19*+	Master Agreement for Program Management, Site Identification and Evaluation, Engineering and Construction Services between Equinix, Inc. and Bechtel Corporation, dated November 3, 1999.
10.20*+	Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.21*	Customer Agreement between Equinix, Inc. and WorldCom, Inc., dated November 16, 1999.
10.22*+	Lease Agreement with GIP Airport B.V., dated as of April 28, 2000.
10.23*	Purchase Agreement between International Business Machines Corporation and Equinix, Inc. dated May 23, 2000.
10.24**	2000 Equity Incentive Plan.
10.25**	2000 Director Option Plan.
10.26**	2000 Employee Stock Purchase Plan.
10.27**	Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.
10.28***+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of July 1, 2000.
10.29***+	Lease Agreement with TrizecHahn Beaumeade Technology Center LLC, dated as of May 1, 2000.
10.30***+	Lease Agreement with Carrier Central LA, Inc., as successor in interest to 600 Seventh Street Associates, Inc., dated as of August 24, 2000.
10.31***+	Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.
10.32***+	Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of August 7, 2000.
10.33***+	Lease Agreement with Quattrocento Limited, dated as of June 1, 2000.
10.34***	Lease Agreement with ARE-2425/2400/2450 Garcia Bayshore, LLC, dated as of March 20, 2000.
10.35***	First Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of October 11, 2000.
10.37****+	Lease Agreement with Quattrocentro Limited, dated as of June 9, 2000.
10.38****+	Lease Agreement with Compagnie des Entrepots et Magasins Generaux de Paris, dated as of July 18, 2000.
10.39****+	Second Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of December 22, 2000.
10.40****	Third Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of March 8, 2001.
10.41*****+	Fourth Supplement to the Lease Agreement with Naxos Schmirdelwerk Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, acting in partnership under the name Naxos-Union Grundstucksverwaltungsgesellschaft GbR, dated as of July 3, 2001.

Exhibit Number	Description of Document
10.42*****+	First Amendment to Deed of Lease with TrizecHahn Beaumeade Technology Center LLC, dated as of March 22, 2001.
10.43*****+	First Lease Amendment Agreement with Market Halsey Urban Renewal, LLC, dated as of May 23, 2001.
10.44*****+	First Amendment to Lease with Nexcomm Asset Acquisition I, L.P., dated as of April 18, 2000.
10.45*****+	Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of December 18, 2000.
10.46******	First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 26, 2001.
10.47******	Amended and Restated Credit and Guaranty Agreement, dated as of September 30, 2001.
10.48******	2001 Supplemental Stock Plan.
10.49*******	Deed Terminating a Commercial Lease with Compagnie des Entrepots et Magasins Generaux de Paris, dated as of September 7, 2001.
10.50********	Agreement terminating the Lease Agreement with Naxos Schmirdelwork Mainkur GmbH and A.A.A. Aktiengesellschaft Allgemeine Anlageverwaltung vorm. Seilwolff AG von 1890, dated as of April 26, 2002.
10.51********	Agreement to Surrender of a Lease Agreement by and between Equinix UK Limited and Quattrocentro Limited, dated as of February 27, 2002.
10.52********	Termination Agreement by and among Equinix, Inc. and Deka Immobilien Investment GMBH, successor in title to GIP Airport B.V., dated as of February 18, 2002, terminating the Lease Agreement with GIP Airport B.V., dated as of April 28, 2000.
10.53********	Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of May 20, 2002.
10.54********+	Amended and Restated Master Service Agreement by and between International Business Machines Corporation and Equinix, Inc., dated as of May 1, 2002.
10.55********	Agreement for Termination of Lease and Voluntary Surrender of Premises by and between ARE-2425/2400/2450 Garcia Bayshore LLC and Equinix Operating Co., Inc., dated as of July 12, 2002.
10.56*********+	Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.
10.57*********+	First Amendment to Lease Agreement for property located at 2450 Bayshore Parkway, Mountain View, CA 94043, dated as of October 1, 2002.
10.58*********	Form of Severance Agreement entered into by the Company and each of the Company's executive officers.
10.59	Second Amended and Restated Credit and Guaranty Agreement, dated as of December 31, 2002.
10.60	Governance Agreement by and among Equinix, Inc., STT Communications Ltd., i-STT Communications Ltd.,—STT Investments Pte Ltd and the Pihana Pacific stockholder named therein, dated as of December 31, 2002.
10.61	Tenancy Agreement over units #06-01, #06-05, #06-06, #06-07 and #06-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.62	Tenancy Agreement over units #05-05, #05-06, #05-07 and #05-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.63	Tenancy Agreement over units #03-01 and #03-02 of Block 28 Ayer Rajah Crescent, Singapore 139959.

Exhibit Number	Description of Document
10.64	Tenancy Agreement over units #05-01, #05-02, #05-03 and #05-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.65	Tenancy Agreement over units #03-05, #03-06, #03-07 and #03-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.66	Lease Agreement with Nation Multimedia Group Public Co., Ltd. For 1st and 3rd Floor of Nation Building II, Bangkok, dated as of February 1, 2001.
10.67	Lease Agreement with Nation Multimedia Group Public Co., Ltd. For 6th Floor of Nation Tower, Bangkok, dated as of October 1, 2001.
10.68	General Factory Lease Agreement dated February 21, 2001.
10.69	Lease Agreement with Downtown Properties, LLC dated April 10, 2000, as amended.
10.70	Lease Agreement with Comfort Development Limited dated November 10, 2000.
10.71	Lease Agreement with PacEast Telecom Corporation dated June 15, 2000, as amended.
10.72	Lease Agreement Lend Lease Real Estate Investments Limited dated October 20, 2000.
10.73	Lease Agreement with AIPA Properties, LLC dated November 1, 1999, as amended.
10.74	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.
10.75	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.
10.76	Securities Purchase Agreement by and among Equinix, the Guarantors and the Purchasers, dated as of October 2, 2002.
10.77	Series A-1 Convertible Secured Note Due 2007 issued to i-STT Investments Pte Ltd on December 31, 2002.
10.78	Preferred Stock Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.79	Change in Control Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.80	Series A Cash Trigger Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.81	Series B Cash Trigger Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.82	First Supplemental Indenture between Equinix and State Street Bank and Trust Company of California, N.A., as Trustee, dated as of December 28, 2002.
16.1*	Letter regarding change in certifying accountant.
21.1	Subsidiaries of Equinix.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Accountants.
99.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
99.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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

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

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

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

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

******	Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001.
*******	Incorporated herein by reference to the exhibit of the same number in the Registrant's Annual Report on Form 10-K for the year ended December 31, 2001.
********	Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2002.
*********	Incorporated herein by reference to the exhibit of the same number in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2002.
**********	Incorporated herein by reference to Annex A of Equinix's Definitive Proxy Statement filed with the Commission December 12, 2002.
+	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 October 9, 2002, the Company filed a Current Report on Form 8-K to report the announcement that on October 2, 2002, the Company entered into a combination agreement to acquire the outstanding stock of i-STT Pte Ltd from STT Communications Ltd. ("STT Communications"), as well as to merge one of the Company's wholly-owned subsidiaries with Pihana Pacific, Inc. ("Pihana"), in which Pihana would become a wholly-owned subsidiary of the Company (collectively, the combination). In connection with the combination, the Company also announced that it had entered into a securities purchase agreement with STT Communications, in which at the closing of the combination, the Company would issue up to $40.0 million aggregate principal amount of convertible secured notes to STT Communications and other purchasers.

On December 26, 2002, the Company filed a Current Report on Form 8-K to make public a pro forma balance sheet as of November 30, 2002 as if the combination had occurred on such date as required by the Nasdaq Qualifications Panel. On August 15, 2002, Equinix received a notice from Nasdaq indicating that the failure of its common stock to maintain Nasdaq's minimum closing bid price requirement of $1.00 had continued beyond the 90-day probationary period allowed under The Nasdaq National Marketplace Rules and, therefore, its common stock may be delisted. On August 21, 2002, Equinix appealed the delisting decision and requested the delisting be stayed pending a hearing before the Nasdaq Qualifications Panel. A hearing was granted and Equinix appeared before the panel on October 3, 2002. On November 25, 2002 the Nasdaq Qualifications Panel issued a decision to continue the listing of our common stock on The Nasdaq National Market. However, such continuance is contingent upon our ability to demonstrate compliance with all of the requirements for initial listing on The Nasdaq National Market and the completion of the combination and related transactions on or before December 31, 2002. In connection with the Panel's decision, the Panel required Equinix to make a public filing, which includes a pro forma balance sheet no older than 45 days from the closing of the combination. This filing on Current Report on Form 8-K met this requirement.

(c) Exhibits.

See (a)(3) above.

(d) Financial Statement Schedule.

See (a)(2) above.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

EQUINIX, INC.
(Registrant)

By /s/ PETER F. VAN CAMP

Peter F. Van Camp
Chief Executive Officer

March 26, 2003

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Peter F. Van Camp or Renee F. Lanam, or either of them, each with the power of substitution, their attorney-in-fact, to sign any amendments to this Form 10-K (including post-effective amendments), and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or their substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ PETER F. VAN CAMP Peter F. Van Camp	Chief Executive Officer and Director (Principal Executive Officer)	March 26, 2003
/s/ RENEE F. LANAM Renee F. Lanam	Chief Financial Officer and Secretary (Principal Financial Officer)	March 26, 2003
/s/ KEITH D. TAYLOR Keith D. Taylor	Vice President, Finance (Principal Accounting Officer)	March 26, 2003
Lee Theng Kiat	Chairman of the Board	
/s/ SCOTT KRIENS Scott Kriens	Director	March 26, 2003

Signature	Title	Date
/s/ ANDREW S. RACHLEFF Andrew S. Rachleff	Director	March 26, 2003
/s/ MICHELANGELO VOLPI Michelangelo Volpi	Director	March 26, 2003
/s/ JEAN F.H.P. MANDEVILLE Jean F.H.P. Mandeville	Director	March 26, 2003
/s/ HARRY F. HOPPER III Harry F. Hopper III	Director	March 26, 2003
Steven Poy Eng	Director	

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Peter F. Van Camp, certify that:

1. I have reviewed this annual report on Form 10-K of Equinix, Inc.

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934, as amended) for the registrant and we have:

   a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

   c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors:

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officer and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: March 26, 2003

/s/ PETER F. VAN CAMP

Peter F. Van Camp
Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Renee F. Lanam, certify that:

1. I have reviewed this annual report on Form 10-K of Equinix, Inc.

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 of the Securities Exchange Act of 1934, as amended) for the registrant and we have:

   a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

   c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors:

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officer and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: March 26, 2003

/s/ RENEE F. LANAM

Renee F. Lanam
Chief Financial Officer

Report of Independent Accountants

To Board of Directors and
Stockholders of Equinix, Inc.

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) on page 45, present fairly, in all material respects, the financial position of Equinix, Inc. and its subsidiaries at December 31, 2002 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP

San Jose, California
March 21, 2003

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EQUINIX, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31, 2002	December 31, 2001
Assets		
Current assets:		
Cash and cash equivalents	$ 41,216	$ 58,831
Short-term investments	—	28,890
Accounts receivable, net of allowance for doubtful accounts of $397 and $381	9,152	6,909
Current portion of restricted cash and short-term investments	1,981	47
Prepaids and other current assets	11,146	8,541
Total current assets	63,495	103,218
Property and equipment, net	390,048	325,226
Construction in progress	—	103,691
Restricted cash and short-term investments, less current portion	2,426	27,997
Intangible assets	24,981	—
Debt issuance costs, net	7,250	11,333
Other assets	3,803	3,589
Total assets	$ 492,003	$ 575,054
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 20,347	$ 11,109
Accrued restructuring charges	11,528	6,390
Accrued construction costs	—	34,650
Accrued interest payable	2,311	2,167
Current portion of debt facilities and capital lease obligations.	5,591	7,206
Current portion of credit facility	1,981	—
Other current liabilities	4,413	1,807
Total current liabilities	46,171	63,329
Debt facilities and capital lease obligations, less current portion	3,633	6,344
Credit facility	89,529	105,000
Senior notes	28,908	187,882
Convertible secured note	25,354	—
Other liabilities	14,214	8,978
Total liabilities	207,809	371,533
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Preferred stock, $0.001 par value per share; 100,000,000 and 10,000,000 shares authorized in 2002 and 2001; 1,868,667 and zero shares issued and outstanding in 2002 and 2001; liquidation preference of $18,298 as of December 31, 2002	2	—
Common stock, $0.001 par value per share; 300,000,000 shares authorized in 2002 and 2001; 8,448,683 and 2,502,412 shares issued and outstanding in 2002 and 2001	8	3
Additional paid-in capital	638,065	544,420
Deferred stock-based compensation	(2,865)	(11,022)
Accumulated other comprehensive income	617	135
Accumulated deficit	(351,633)	(330,015)
Total stockholders' equity	284,194	203,521
Total liabilities and stockholders' equity	$ 492,003	$ 575,054

See accompanying notes to consolidated financial statements.

EQUINIX, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year ended December 31,		
	2002	2001	2000
Revenues	$ 77,188	$ 63,414	$ 13,016
Costs and operating expenses:			
Cost of revenues (includes stock-based compensation of $266, $426 and $766 for the years ended December 31, 2002, 2001, and 2000 respectively)	104,073	94,889	43,401
Sales and marketing (includes stock-based compensation of $952, $2,830, and $6,318 for the years ended December 31, 2002, 2001, and 2000 respectively)	15,247	16,935	20,139
General and administrative (includes stock-based compensation of $5,660, $15,788, and $22,809 for the years ended December 31, 2002, 2001, and 2000, respectively)	30,659	58,286	56,585
Restructuring charges	28,885	48,565	—
Total costs and operating expenses	178,864	218,675	120,125
Loss from operations	(101,676)	(155,261)	(107,109)
Interest income	998	10,656	16,430
Interest expense	(35,098)	(43,810)	(29,111)
Gain on debt extinguishment	114,158	—	—
Net loss	$ (21,618)	$ (188,415)	$ (119,790)
Net loss per share:			
Basic and diluted	$ (7.23)	$ (76.62)	$ (111.23)
Weighted average shares	2,990	2,459	1,077

See accompanying notes to consolidated financial statements.

EQUINIX, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND OTHER COMPREHENSIVE LOSS
FOR THE THREE YEARS ENDED DECEMBER 31, 2002
(in thousands, except share data)

	Preferred stock		Common stock		Additional paid-in capital	Deferred stock-based compensation	Accumulated other comprehensive income (loss)	Accumulated deficit	Total stockholders' equity
	Shares	Amount	Shares	Amount					
Balances as of December 31, 1999	—	$ —	364,756	$ —	$ 43,974	$ (13,706)	$ 14	$ (21,810)	$ 8,472
Issuance of common stock for cash	—	—	3,600	—	1,033	—	—	—	1,033
Issuance of common stock upon exercise of common stock options	—	—	44,442	—	2,472	—	—	—	2,472
Issuance of common stock upon exercise of common stock warrants	—	—	22,126	—	353	—	—	—	353
Issuance of common stock from initial public offering, net	—	—	709,399	1	251,481	—	—	—	251,482
Conversion of redeemable convertible preferred stock	—	—	1,271,877	1	191,579				191,580
Repurchase of unvested common stock	—	—	(10,824)	—	(28)	—	—	—	(28)
Issuance/revaluation of common stock options and warrants	—	—	—	—	7,744	—	—	—	7,744
Deferred stock-based compensation, net of forfeitures	—	—	—	—	54,537	(54,537)	—	—	—
Amortization of stock-based compensation	—	—	—	—	—	29,893	—	—	29,893
Comprehensive income (loss):									
Net loss	—	—	—	—	—	—	—	(119,790)	(119,790)
Foreign currency translation gain	—	—	—	—	—	—	1,992	—	1,992
Unrealized loss on short-term investments	—	—	—	—	—	—	(87)	—	(87)
Net comprehensive loss	—	—	—	—	—	—	1,905	(119,790)	(117,885)
Balances as of December 31, 2000	—	—	2,405,376	2	553,145	(38,350)	1,919	(141,600)	375,116
Issuance of common stock upon exercise of common stock options	—	—	15,534	—	435	—	—	—	435
Issuance of common stock upon exercise of common stock warrants	—	—	72,882	—	—	—	—	—	—
Issuance of common stock under employee stock purchase plan	—	—	16,427	1	1,483	—	—	—	1,484
Repurchase of unvested common stock	—	—	(7,807)	—	(18)	—	—	—	(18)
Issuance/revaluation of common stock warrants	—	—	—	—	(2,341)	—	—	—	(2,341)
Deferred stock-based compensation, net of forfeitures	—	—	—	—	(8,284)	8,284	—	—	—
Amortization of stock-based compensation	—	—	—	—	—	19,044	—	—	19,044
Comprehensive income (loss):									
Net loss	—	—	—	—	—	—	—	(188,415)	(188,415)
Foreign currency translation loss	—	—	—	—	—	—	(1,873)	—	(1,873)
Unrealized gain on short-term investments	—	—	—	—	—	—	89	—	89
Net comprehensive loss	—	—	—	—	—	—	(1,784)	(188,415)	(190,199)
Balances as of December 31, 2001	—	—	2,502,412	3	544,420	(11,022)	135	(330,015)	203,521
Issuance of common stock upon exercise of common stock options	—	—	12,965	—	112	—	—	—	112
Issuance of common stock upon exercise of common stock warrants	—	—	58,551	—	11	—	—	—	11
Issuance of common stock under employee stock purchase plan	—	—	16,689	—	415	—	—	—	415
Issuance of common stock upon exchange of senior notes	—	—	2,357,001	2	30,831	—	—	—	30,833
Issuance of common and preferred stock upon acquisition of i-STT	1,868,667	2	1,084,686	1	31,184	—	—	—	31,187
Issuance of common stock upon acquisition of Pihana	—	—	2,416,379	2	25,515	—	—	—	25,517
Issuance/revaluation of common and preferred stock warrants	—	—	—	—	6,856	—	—	—	6,856
Deferred stock-based compensation, net of forfeitures	—	—	—	—	(1,279)	1,279	—	—	—
Amortization of stock-based compensation	—	—	—	—	—	6,878	—	—	6,878
Comprehensive income (loss):									
Net loss	—	—	—	—	—	—	—	(21,618)	(21,618)
Foreign currency translation gain	—	—	—	—	—	—	498	—	498
Unrealized loss on short-term investments	—	—	—	—	—	—	(16)	—	(16)
Net comprehensive loss	—	—	—	—	—	—	482	(21,618)	(21,136)
Balances as of December 31, 2002	1,868,667	$ 2	8,448,683	$ 8	$ 638,065	$ (2,865)	$ 617	$ (351,633)	$ 284,194

See accompanying notes to consolidated financial statements.

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EQUINIX, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year ended December 31,		
	2002	2001	2000
Cash flows from operating activities:			
Net loss.	$ (21,618)	$ (188,415)	$ (119,790)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	54,082	49,645	14,816
Amortization of stock-based compensation	6,878	19,044	29,893
Amortization of debt-related issuance costs and discounts	5,977	7,195	8,445
Allowance for doubtful accounts	2,329	521	608
Issuance of common stock to charity	—	—	780
Loss on disposal of fixed assets	11	—	—
Gain on debt extinguishment	(114,158)	—	—
Restructuring charges	28,885	48,565	—
Changes in operating assets and liabilities:			
Accounts receivable	(2,511)	(2,505)	(5,355)
Prepaids and other current assets	4,290	2,001	(8,776)
Other assets	2,604	(1,657)	(354)
Accounts payable and accrued expenses	11,126	(2,742)	9,574
Accrued restructuring charge	(9,279)	(2,088)	—
Other current liabilities	2,374	161	1,441
Other liabilities	1,501	1,421	645
Net cash used in operating activities	(27,509)	(68,854)	(68,073)
Cash flows from investing activities:			
Purchase of short-term investments	(14,662)	(168,411)	(114,968)
Sales and maturities of short-term investments	43,536	172,047	102,253
Purchases of property and equipment	(6,508)	(57,791)	(296,320)
Additions to construction in progress	—	(44,343)	(74,448)
Accrued construction costs	(28,708)	(54,693)	79,571
Purchase of restricted cash and short-term investments	(5,090)	(25,020)	(24,246)
Sale of restricted cash and short-term investments	3,904	25,197	26,000
Net cash used in investing activities	(7,528)	(153,014)	(302,158)
Cash flows from financing activities:			
Proceeds from issuance of common stock	537	1,918	254,560
Proceeds from convertible secured note	30,000	—	—
Acquisition of cash from i-STT and Pihana, less acquisition costs	29,180	—	—
Proceeds from issuance of debt facilities and capital lease obligations	—	8,004	6,884
Repayment of debt facilities and capital lease obligations	(6,118)	(5,559)	(9,955)
Proceeds from credit facility	—	150,000	—
Repayment of credit facility	(13,490)	(45,000)	—
Repayment of senior notes and debt extinguishment costs	(21,291)	—	—
Repurchase of common stock	—	(18)	(28)
Proceeds from issuance of redeemable convertible preferred stock, net	—	—	94,353
Debt issuance costs	(1,894)	(1,546)	(5,967)
Net cash provided by financing activities	16,924	107,799	339,847
Effect of foreign currency exchange rates on cash and cash equivalents	498	(1,873)	1,992
Net decrease in cash and cash equivalents	(17,615)	(115,942)	(28,392)
Cash and cash equivalents at beginning of year	58,831	174,773	203,165
Cash and cash equivalents at end of year	$ 41,216	$ 58,831	$ 174,773
Supplemental disclosure of cash flow information:			
Cash paid for taxes	$ 39	$ 18	$ —

Cash paid for interest	$ 19,948	$ 38,103	$ 28,876

See accompanying notes to consolidated financial statements.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business and Summary of Significant Accounting Policies

Nature of Business

Equinix, Inc. ("Equinix" or the "Company") was incorporated as Quark Communications, Inc. in Delaware on June 22, 1998. The Company changed its name to Equinix, Inc. on October 13, 1998. Equinix designs, builds, and operates Internet Business Exchange ("IBX") hubs where Internet businesses place their equipment and their network facilities in order to interconnect with each other to improve Internet performance. The Company's IBX hubs and Internet exchange services enable network service providers, enterprises, content providers, managed service providers and other Internet infrastructure companies to directly connect with each other for increased performance.

Since its inception, the Company has been successful in completing several rounds of financing. During the same period, the Company has incurred substantial losses and negative cash flows from operations in every fiscal period since inception. As of December 31, 2002, the Company had an accumulated deficit of $351.6 million. For the year ended December 31, 2002, the Company incurred a loss from operations of $101.7 million and negative cash flows from operations of $27.5 million.

In October 2002, the Company entered into agreements to consummate a series of related acquisition and financing transactions. These transactions closed on December 31, 2002 and, as such, the consolidated balance sheet as of that date includes the net assets acquired. Under the terms of these agreements, the Company combined its business with two similar businesses, which are predominantly based in the Asia-Pacific region, through the acquisition of i-STT Pte Ltd ("i-STT") and Pihana Pacific, Inc. ("Pihana") by issuing approximately 3.5 million shares of Equinix common stock and approximately 1.9 million shares of Equinix preferred stock. The Company refers to this transaction as the combination (the "Combination") (see Note 2). In conjunction with the Combination, the Company issued to i-STT's former parent company, STT Communications Ltd. ("STT Communications"), a $30.0 million convertible secured note in exchange for cash. The Company refers to this transaction as the financing (the "Financing") (see Note 7).

i-STT's operations are, and are expected to continue to be, essentially break-even from operating activities. Although Pihana's centers are expected to operate at a loss for approximately 24 months from the closing of the Combination, Pihana contributed $33.3 million of cash at closing (approximately $21.7 million, net of working capital), which the Company believes will be sufficient cash to offset its centers' projected loss from operations for this period. In addition, by combining Equinix's, i-STT's and Pihana's businesses, the Company expects to be able to reduce the annual operating expenses of the combined company by approximately $13.0 million. This will be done through the elimination of duplicate corporate overhead costs, specifically including the closing of Pihana's corporate headquarters, and a reduction in headcount of the combined companies of nearly 20%, primarily in the general and administrative areas. Furthermore, by using a portion of the cash raised in the transactions to reduce approximately $125.3 million of the Company's debt, the Company has reduced its annual cash interest payments by approximately $15.8 million.

In connection with the Combination and Financing, the Company completed the Senior Note Exchange, whereby the Company amended the terms of the Indenture governing the Senior Notes and extinguished $116.8 million of Senior Notes in exchange for a combination of common stock and cash. This resulted in the recognition of a substantial gain on debt extinguishment during the fourth quarter of 2002 (see Note 5).

In addition, in connection with the Combination, Financing and the Senior Note Exchange, the Company completed a further amendment to its Credit Facility (see Note 6).

As of December 31, 2002, the Company had $41.2 million of cash and cash equivalents. The Company believes that this cash, together with anticipated positive cash flow from operations commencing by the end of

2003 and projected cost-savings in connection with the Combination, will be sufficient to meet the working capital, debt service and corporate overhead requirements associated with its operations for the next twelve months. Although the Company believes it has sufficient cash to reach cash flow break-even from operating, investing and financing activities, the Company will continue to look for opportunities to raise additional capital to provide the Company with greater operating flexibility.

Under the terms of the Second Amendment to the Amended and Restated Credit Facility (see Note 6), the Company must meet certain financial and non-financial covenants. While these covenants were reset consistent with the Company's expected future performance as a combined company, if the Company does not achieve the intended growth required or the Company is unable to reduce costs to a level to comply with these covenants, the Company may be required to repay the $91.5 million currently outstanding under this facility. Since the Company does not have sufficient cash reserves to pay this if an event of default occurs, the Company may be required to renegotiate with the debt issuers for forbearance, make other financial arrangements or take other actions in order to pay down the loan. There can be no assurance that such revised covenants will be met, or that the Company will be able to obtain a forbearance or that replacement financing will be available. In addition, a default in the Second Amendment to the Amended and Restated Credit Facility will trigger cross-default provisions in the Company's other debt facilities. If the cash flows from operations are not sufficient to support the Company's cash requirements, cost reductions implemented as a result of this could adversely affect the business and the Company's ability to achieve the Company's business objectives.

Stock Split

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

Basis of Presentation

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

Consolidation

The Company follows the provisions of Statement of Financial Accounting Standards ("SFAS") No. 94, "Consolidation of All Majority-Owned Subsidiaries" and Emerging Issues Task Force ("EITF") Abstract No. 96-16, "Investor's Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights". As a result, all majority-owned subsidiaries are consolidated unless the Company does not have control. Evidence of such a lack of effective control includes the Company's inability to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

As a result of the Combination (see Note 2), the Company acquired a 60% interest in i-STT Nation Limited, an IBX hub operation in Thailand. However, as a result of certain substantive participating rights granted to minority shareholders, i-STT Nation Limited is not considered a controlled subsidiary and accordingly, it is not consolidated. Accordingly, the Company accounts for i-STT Nation Limited as an equity investment using the equity method of accounting. Under the preliminary purchase price allocation, the Company attributed no value to this investment as i-STT Nation Limited is in the early stages of operations and is not able to generate positive operating cashflow for the foreseeable future. The Company is continuing to review its strategic alternatives related to i-STT Nation Limited.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Use of Estimates

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

Cash, Cash Equivalents and Short-Term Investments

The Company considers all highly liquid instruments with an original maturity from the date of purchase of three months or less to be cash equivalents. Cash equivalents consist of money market mutual funds and certificates of deposit with financial institutions with maturities of between 7 and 60 days. Short-term investments generally consist of certificates of deposits with maturities of between 90 and 180 days and highly liquid debt and equity securities of corporations, municipalities and the U.S. government. Short-term investments are classified as "available-for-sale" and are carried at fair value based on quoted market prices with unrealized gains and losses reported in stockholders' equity as a component of comprehensive income. The cost of securities sold is based on the specific identification method.

Restricted Cash and Short-term Investments

Restricted cash and short-term investments as of December 31, 2002, consisted of $1,981,000 deposited with an escrow agent to pay the current interest payment on the Senior Notes (see Note 5), which was paid in January 2003; $1,939,000, which was used as collateral to support the issuance of six standby letters of credit in lieu of deposits under certain lease agreements with various expiry dates through 2015; and 3,800,000 Hong Kong dollars (approximately $487,000 as translated using effective exchange rates at December 31, 2002) reserved for placement into an escrow account with a third party as required by a customer agreement in Hong Kong, whereby the customer would be able to draw upon the amount in the case of Equinix's insolvency, as defined in the agreement (the "Hong Kong Customer Escrow Account"). As of December 31, 2002 and through the date of this filing, the Hong Kong Customer Escrow Account has not yet been funded. During the year ended December 31, 2002, the Company recorded several restructuring charges as part of its effort to exit or amend several unnecessary U.S. IBX expansion and headquarter office space leases. Part of this restructuring charge included the write-off of $250,000 for a letter of credit related to one of these U.S. leaseholds (see Note 13). In addition, part of this restructuring charge reflected the write-off of $19,010,000 for letters of credit related to the exercise of the Company's option to elect to permanently exclude approximately 40 acres from the San Jose Ground Lease. The remaining $5,990,000 in letters of credit associated with the San Jose Ground Lease was reclassified as prepaid rent (see Note 10).

Restricted cash and short-term investments as of December 31, 2001, consisted of $28,044,000, which was used as collateral to support the issuance of ten standby letters of credit in lieu of deposits under certain domestic lease agreements, including two letters of credit, totaling $25,000,000, posted in connection with Company's San Jose Ground Lease (see Note 10). These lease agreements have expiration terms at various dates through 2020. During the quarter ended September 30, 2001, the Company recorded a restructuring charge as part of its revised European services strategy. Part of this restructuring charge included the write-off of $8,634,000 in connection with several letters of credit related to the Company's long-term European operating leases (see Note 13).

Financial Instruments and Concentration of Credit Risk

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

The Company's customer base has historically been composed primarily of businesses throughout the United States; however, on December 31, 2002, as a result of the Combination (see Note 2), the Company acquired the accounts receivable balances of i-STT and Pihana, and commencing in fiscal 2003, the Company's revenues will include revenues from these newly-acquired Asia-Pacific operations. The Company performs ongoing credit evaluations of its customers. As of December 31, 2002, one customer, IBM, accounted for 20% of revenues and 15% of accounts receivables. As of December 31, 2001, one customer, IBM, accounted for 15% of revenues and another customer, SiteSmith, accounted for 10% of accounts receivables. As of December 31, 2000, two customers, IBM and Loudcloud (now known as Opsware), accounted for 12% and 11% of revenues and two customers, IBM and UUNET, accounted for 19% and 14% of accounts receivables. No other single customer accounted for greater than 10% of accounts receivables or revenues for the periods presented.

Property and Equipment

Property and equipment are stated at original cost. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets, generally two to five years for non-IBX hub equipment and seven to ten years for IBX hub equipment. Leasehold improvements and assets acquired under capital lease are amortized over the shorter of the lease term or the estimated useful life of the asset or improvement, which is generally ten to fifteen years for the leasehold improvements.

Construction in Progress

Construction in progress includes direct and indirect expenditures for the construction of IBX hubs and is stated at original cost. The Company has contracted out substantially all of the construction of the IBX hubs to independent contractors under construction contracts. Construction in progress includes certain costs incurred under a construction contract including project management services, site identification and evaluation services, engineering and schematic design services, design development and construction services and other construction-related fees and services. In addition, the Company has capitalized certain interest costs during the construction phase. Once an IBX hub becomes operational, these capitalized costs are transferred to property and equipment and are depreciated at the appropriate rate consistent with the estimated useful life of the underlying asset.

Included within construction in progress is the value attributed to the unearned portion of warrants issued to certain fiber carriers and our contractor totaling $1,439,000 as of December 31, 2001 (see Note 8).

Interest incurred is capitalized in accordance with SFAS No. 34, *Capitalization of Interest Costs.* There was no interest capitalized during the year ended December 31, 2002. Total interest cost incurred and total interest capitalized during the year ended December 31, 2001, was $45,350,000 and $1,540,000, respectively. Total interest cost incurred and total interest capitalized during the year ended December 31, 2000 was $34,102,000 and $4,991,000, respectively.

During the quarter ended March 31, 2002, the Company completed construction on its seventh and largest IBX hub, which is located in the New York metropolitan area, and placed it into service. The Company currently has no IBX hubs under construction.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Intangible Assets

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

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

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

Other identifiable intangible assets, comprised of customer contracts and tradename, are carried at cost, less accumulated amortization. No amortization was recognized in fiscal 2002 as the Combination was consummated on December 31, 2002 (see Note 2). Beginning in fiscal 2003, the Company will start amortizing these other identifiable intangibles on a straight-line basis over their estimated useful lives, which are two years for customer contracts and one year for tradename.

Fair Value of Financial Instruments

The carrying value amounts of the Company's financial instruments, which include cash equivalents, short-term investments, accounts receivable, accounts payable, accrued expenses and long-term obligations approximate their fair value due to either the short-term maturity or the prevailing interest rates of the related instruments. The fair value of the Company's Senior Notes (see Note 5) is based on quoted market prices. The estimated fair value of the Senior Notes was approximately $4.6 million and $70.0 million as of December 31, 2002 and 2001, respectively. During fiscal 2002, the Company retired approximately $169.5 million of Senior Notes (see Note 5).

Impairment of Long-Lived Assets and Long-Lived Assets to be Disposed Of

The Company accounts for impairment of long-lived assets in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which the Company adopted in fiscal 2002. SFAS No. 144 establishes a uniform accounting model for long-lived assets to be disposed of. SFAS No. 144 also requires that long-lived assets be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by comparing the carrying amount of an asset to estimated undiscounted future net cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. During the quarter ended June 30, 2002, the Company wrote-down the value of some property and

equipment, primarily leasehold improvements and some equipment, located in two unnecessary U.S. IBX expansion and headquarter office space operating leaseholds that the Company decided to exit and that do not currently provide any ongoing benefit (see Note 13).

In light of a number of factors, including the continued difficulty in the economy and the Company's significant losses to date, an impairment assessment was undertaken of the Company's IBX hubs as of December 31, 2002. This assessment involved an assessment of the future net cash flows generated by each IBX hub over their respectful useful lives and comparing this against the carrying value of that IBX hub. The revenue and cost assumptions used in this analysis were based on numerous factors, including the current revenue and cost performance of each IBX hub, historical growth rates, the remaining space to fill each IBX hub to full capacity relative to the market demand in each of the individual geographic markets of each IBX hub, expected inflation rates and any other available economic indicators and factors that the Company believed were relevant. This analysis showed that the total of the undiscounted future cash flows was greater than the carrying amount of the assets, and accordingly, no impairment was deemed to have occurred. Significant judgments and assumptions were required in the forecast of future operating results used in the preparation of the estimated future cash flows, including profit margins, customer growth and the timing of overall market growth and the Company's percentage of that market. Accordingly, if future results do not match these current estimates, revised future forecasts could result in a material adverse effect on the assessment of the Company's long-lived assets, thereby requiring the Company to write down the assets.

Prior to adoption of SFAS No. 144, the Company accounted for long-lived assets in accordance with SFAS No. 121, "Accounting for Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of." During the quarter ended September 30, 2001, the Company wrote-down the value of its European construction in progress to its net realizable value as part of a larger restructuring charge in conjunction with a revised European services strategy (see Note 13). In December 2000, based on the uncertainty of the Company's future business relationship with NorthPoint (see Note 8), as a result of their filing under Chapter 11 bankruptcy protection, the Company determined that the future value of the other asset attributed to the unamortized portion of the fully-vested, nonforfeitable warrant was questionable and accordingly, the remaining asset totaling approximately $700,000 was written off.

Revenue Recognition

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

Revenue is recognized as service is provided when there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection of the receivable is reasonably assured. It is customary business practice to obtain a signed master sales agreement and sales order prior to recognizing revenue in an arrangement. The

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

During the year ended December 31, 2001, the Company recognized approximately $200,000 of revenue in relation to equipment received from customers in lieu of cash. This equipment is being used in the Company's operations and was valued based on management's assessment of the fair value of the equipment in relation to external prices for similar equipment.

In February and March 2002, the Company entered into arrangements with numerous vendors to resell equipment and bandwidth, including two related parties (see Note 11). The Company began to offer such services in an effort to provide its customers a more fully-integrated services solution. Under the terms of the reseller agreements, the Company will sell the vendors' services or products to its customers and the Company will contract with the vendor to provide the related services or products. The Company recognizes revenue from such arrangements on a gross basis in accordance with EITF Abstract No. 99-19, "Recording Revenue as a Principal versus Net as an Agent." The Company acts as the principal in the transaction as the Company's customer services agreement identifies the Company as the party responsible for the fulfillment of product/ services to the Company's customers and has full pricing discretion. In the case of products sold under such arrangements, the Company takes title to the products and bears the inventory risk as the Company has made minimum purchase commitments to various vendors. The Company has credit risk, as it is responsible for collecting the sales price from a customer, but must pay the amount owed to its suppliers after the suppliers perform, regardless of whether the sales price is fully collected. In addition, the Company will often determine the required equipment configuration and recommend bandwidth providers from numerous potential suppliers. For the year ended December 31, 2002, the Company recognized revenue of $2.9 million from the sale of equipment and associated cost of revenue of $2.8 million. The Company had no equipment sales during fiscal 2001.

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.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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.

The Company accounts for stock-based compensation arrangements with nonemployees in accordance with the Emerging Issues Task Force ("EITF") Abstract No. 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods or Services." Accordingly, unvested options and warrants held by nonemployees are subject to revaluation at each balance sheet date based on the then current fair market value.

Unearned deferred compensation resulting from employee and nonemployee 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").

The Company provides additional pro forma disclosures required by SFAS No. 123, as amended by SFAS No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure—An Amendment of SFAS No. 123". Had compensation costs been determined using the fair value method for the Company's stock-based compensation plans including the employee stock purchase plan, net loss would have been increased by $6,007,000, $8,564,000 and $3,055,000 for the years ended December 31, 2002, 2001 and 2000, respectively, as indicated below for the years ended December 31 (in thousands, except per share data):

	2002	2001	2000
Net loss:			
As reported	$ (21,618)	$ (188,415)	$ (119,790)
Pro forma	(27,625)	(196,979)	(122,845)
Net loss per share:			
As reported	$ (7.23)	$ (76.62)	$ (111.23)
Pro forma	(9.24)	(80.11)	(114.06)

The Company's fair value calculations for employee grants were made using the minimum value method prior to the IPO and the Black-Scholes option pricing model after the IPO with the following weighted average assumptions for the years ended December 31:

	2002	2001	2000
Dividend yield	0%	0%	0%
Expected volatility	135%	80%	80%
Risk-free interest rate	3.75%	3.94%	6.14%
Expected life (in years)	3.50	3.04	2.50

The Company's fair value calculations for employee's stock purchase rights under the Purchase Plan (see Note 8) 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 Purchase Plan was 2 years for all periods presented.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Comprehensive Income

The Company has adopted the provisions of SFAS No. 130, "Reporting Comprehensive Income." SFAS No. 130 establishes standards for the reporting and display of comprehensive income and its components; however, the adoption of this statement had no impact on the Company's net loss or stockholders' equity. SFAS No. 130 requires unrealized gains or losses on the Company's available-for-sale securities to be included in other comprehensive income (loss). Comprehensive income (loss) consists of net loss and other comprehensive income.

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 years ended December 31 (in thousands, except per share amounts).

	2002	2001	2000
Numerator:			
Net loss	$ (21,618)	$ (188,415)	$ (119,790)
Denominator:			
Weighted average shares	3,015	2,547	1,271
Weighted average unvested shares subject to repurchase	(25)	(88)	(194)
Total weighted average shares	2,990	2,459	1,077
Net loss per share:			
Basic and diluted	$ (7.23)	$ (76.62)	$ (111.23)

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 December 31:

	2002	2001	2000
Series A preferred stock	1,868,667	—	—
Series A preferred stock warrant	965,674	—	—
Common stock warrants	269,586	65,831	115,851
Common stock options	5,478,659	651,905	277,915
Common stock subject to repurchase	24,463	88,109	194,106

Derivatives and Hedging Activities

The Company adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended, at the beginning of its fiscal year 2001. The standard requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through the statement of operations. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings, or recognized in other comprehensive income (loss) until the hedged item is

recognized in earnings. The ineffective portion of a derivative's change in fair value will be immediately recognized in earnings. As of December 31, 2002, the Company had not entered into any derivative or hedging activities.

Recent Accounting Pronouncements

In May 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 13, and Technical Corrections" ("SFAS 145"). SFAS 145 rescinds the automatic treatment of gains or losses from extinguishment of debt as extraordinary unless they meet the criteria for extraordinary items as outlined in APB Opinion No. 30, "Reporting the Results of Operations, Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions." In addition, SFAS 145 also requires sale-leaseback accounting for certain lease modifications that have economic effects that are similar to sale-leaseback transactions and makes various technical corrections to existing pronouncements. SFAS 145 is effective for us for all financial statements issued in fiscal 2003; however, as allowed under the provisions of SFAS 145, the Company decided to early adopt SFAS 145 in relation to extinguishments of debt for the year ended December 31, 2002. As a result of the early adoption of SFAS 145, the gains on debt extinguishment that the Company realized in 2002 from the extinguishment of Senior Notes during the year (see Note 5) were not reported as extraordinary transactions.

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

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" ("FIN 45"). FIN 45 requires a guarantor to recognize a liability for obligations it has undertaken in relation to the issuance of a guarantee in addition to providing additional disclosures on such guarantees. The liability would be recorded at fair value on the date the guarantee is issued. The disclosure requirements of FIN 45 are effective for the interim and annual periods ending after December 15, 2002. The recognition and measurement provisions of FIN 45 are effective after December 31, 2002. As of December 31, 2002, the Company adopted the disclosure requirements of FIN 45 (see Note 10). The Company is currently evaluating the effects of the liability measurement provisions of FIN 45 on its financial statements commencing in fiscal 2003.

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

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation— Transition and Disclosure—an Amendment of SFAS No. 123" ("SFAS 148"). SFAS 148 encourages the adoption of the accounting provisions of SFAS 123 and requires additional disclosure, including in interim financial statements, for all companies regardless of whether or not they adopt the accounting provisions of

SFAS 123. This statement is effective for the Company's 2002 Annual Report on Form 10-K and the new interim disclosure provisions are effective for the first quarter of 2004.

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

2. The Combination

Acquisition of i-STT

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

The fair value of the Company's stock issued was determined using the five-trading-day average price of the Company's common stock surrounding the date the transaction was announced in October 2002. The Company determined that the fair value of the Series A preferred stock and the common stock was the same because the material rights, preferences and privileges of Series A preferred stock and the common stock are virtually identical (see Note 8).

The preliminary purchase price, including direct merger costs, have been allocated to the net tangible and intangible assets acquired and liabilities assumed based on their estimated fair value at the date of acquisition. The Company retained the services of an independent valuation expert to assist with the determination of the fair value of the intangible assets. The estimated fair value of the assets and liabilities assumed is summarized as follows (in thousands):

Cash and cash equivalents	$	1,699
Accounts receivable		1,307
Other current assets		197
Property and equipment		10,824
Intangible asset—customer contracts		3,600
Intangible asset—tradename		300
Intangible asset—goodwill		21,081
Other assets		100
Total assets acquired		39,108
Accounts payable and accrued expenses		(4,153)
Accrued restructuring charges		(400)
Other current liabilities		(190)
Net assets acquired	$	34,365

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company accounted for the i-STT Acquisition using the purchase method. The customer contracts intangible asset will have a useful life of two years, the typical term of a customer contract, and the tradename intangible asset will have a useful life of one year, the contractual period under the Combination Agreement. Included in the net liabilities assumed, is an accrual of $400,000 representing the estimated costs to exit from an undeveloped IBX hub leasehold interest in Shanghai, China. The Company expects to exit this lease in 2003. While the Company does not expect there will be any changes to the Company's preliminary purchase price due to any unknown contingent liabilities or purchase price adjustments, any subsequent adjustment to the purchase price would result in a change to the amount of goodwill carried on the balance sheet.

Acquisition of Pihana

On December 31, 2002, a wholly-owned subsidiary of the Company merged with and into Pihana (the "Pihana Acquisiton"). Pihana is a similar business to that of Equinix with IBX hub operations in Singapore; Tokyo, Japan; Sydney, Australia; Hong Kong, China, as well as Los Angeles and Honolulu in the U.S. The entire purchase price of $28,376,000 was comprised of (i) 2,416,379 shares of the Company's common stock, with a total value of $25,517,000, (ii) total cash consideration and direct transaction costs of $2,701,000 and (iii) the value of Pihana shareholder warrants assumed in the Pihana Acquisition of $176,000 (the "Pihana Shareholder Warrants"). The fair market value of the Company's stock issued was determined using the five-trading-day average price of the Company's common stock surrounding the date the transaction was announced in October 2002. The fair value of the Pihana Shareholder Warrants, which represent the right to purchase 133,442 shares of the Company's common stock at an exercise price of $191.81 per share, was determined using the Black-Scholes option-pricing model and the following assumptions: fair market value per share of $5.70, dividened yield of 0%, expected volatility of 135%, risk-free interest rate of 4% and a contractual life of approximately 3 years.

The preliminary purchase price, including direct merger costs, have been allocated to assets acquired and liabilities assumed based on their estimated fair value at the date of acquisition. The estimated fair value of the assets and liabilities assumed is summarized as follows (in thousands):

Cash and cash equivalents	$	33,341
Accounts receivable		754
Other current assets		1,773
Property and equipment		5,691
Restricted cash		927
Other assets		2,329
Total assets acquired		44,815
Accounts payable and accrued expenses		(3,455)
Accrued restructuring charges and transaction fees		(9,470)
Other current liabilities		(42)
Capital lease obligations		(1,536)
Other liabilities		(1,936)
Net assets acquired	$	28,376

The Company accounted for the Pihana Acquisition using the purchase method. Included in the net liabilities assumed are total restructuring charges of $9,470,000, which relate primarily to the exit of the undeveloped portion of the Pihana Los Angeles IBX hub leasehold, severance related to an approximate 30% reduction in workforce, including several officers of Pihana and some transaction-related professional fees (see Note 13). A substantial portion of these costs were paid in January 2003. Prior to December 31, 2002, Pihana sold their Korean IBX hub operations, which was excluded from the Pihana Acquisition, terminated or amended

several operating leaseholds and recorded a substantial impairment charge against the value of their property and equipment assumed in the Pihana Acquisition. While the Company does not expect there will be any changes to the Company's preliminary purchase price due to any unknown contingent liabilities or purchase price adjustments, any subsequent adjustment to the purchase price would result in a change to the amount of property and equipment assumed in the Pihana Acquisition.

Preliminary Unaudited Pro Forma Consolidated Combined Results

The operating results of i-STT and Pihana included in the Company's consolidated statements of operations and cash flows commencing on December 31, 2002 were immaterial to the consolidated results of the Company. The following preliminary unaudited pro forma financial information presents the consolidated results of the Company as if the i-STT Acquisition and Pihana Acquisition had occurred as of January 1, 2001, and includes adjustments to exclude the Korean operations not acquired in the Pihana Acquisiton. This preliminary pro forma financial information does not necessarily reflect the results of operations as they would have been if the Company had acquired these entities as of January 1, 2001. Preliminary unaudited pro forma consolidated results of operations for the years ended December 31, 2002 and 2001 are as follows (in thousands, except per share data):

	2002	2001
Revenues	$ 93,150	$ 75,581
Net loss	(69,351)	(250,029)
Basis and diluted net loss per share	(10.68)	(41.95)

These preliminary unaudited pro forma results do not include the effects of the the Senior Note Exchange (see Note 5) or Financing (see Note 7).

3. Balance Sheet Components

Cash, Cash Equivalents and Short-term Investments

Cash, cash equivalents and short-term investments consisted of the following as of December 31 (in thousands):

	2002	2001
Money market	$ 41,216	$ 26,864
Municipal bonds	—	12,833
US government and agency obligations	—	14,397
Corporate bonds	—	4,116
Other securities	—	29,511
Total available-for-sale securities	41,216	87,721
Less amounts classified as cash and cash equivalents	(41,216)	(58,831)
Total market value of short-term investments	$ —	$ 28,890

The original maturities of short-term investments are as follows as of December 31 (in thousands):

	2002	2001
Less than one year	$ —	$ 25,320
Due in 1-2 years	—	3,570
Total market value of short-term investments	$ —	$ 28,890

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

As of December 31, 2002 and 2001, cost approximated market value of cash, cash equivalents and short-term investments; unrealized gains and losses were zero as of December 31, 2002, a gain of $17,000 as of December 31, 2001 and a loss of $73,000 as of December 31, 2000. As of December 31, 2002 and 2001, cash equivalents included investments in other securities with various contractual maturity dates that do not exceed 90 days. Gross realized gains and losses from the sale of securities classified as available-for-sale were not material for the years ended December 31, 2002, 2001 and 2000. For the purpose of determining gross realized gains and losses, the cost of securities is based upon specific identification.

Accounts Receivable

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

	2002	2001
Accounts receivable	$ 16,017	$ 12,868
Unearned revenue	(6,468)	(5,578)
Allowance for doubtful accounts	(397)	(381)
	$ 9,152	$ 6,909

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

Prepaids and Other Current Assets

Prepaids and other current assets consist of the following as of December 31 (in thousands):

	2002	2001
Prepaid rent	$ 4,913	$ 4,964
Prepaid insurance	1,507	822
Prepaid other	1,142	439
Taxes receivable	2,391	28
Other current assets	1,193	2,288
	$ 11,146	$ 8,541

Property & Equipment

Property and equipment is comprised of the following as of December 31 (in thousands):

	2002	2001
Leasehold improvements	$ 384,334	$ 285,090
IBX plant and machinery	61,761	54,194
Computer equipment and software	17,580	11,306
IBX equipment	33,677	28,704
Furniture and fixtures	2,522	2,533
	499,716	381,827
Less accumulated depreciation	(109,826)	(56,601)
	$ 390,048	$ 325,226

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Leasehold improvements, certain computer equipment, software and furniture and fixtures recorded under capital leases aggregated $5,779,000 at both December 31, 2002 and 2001, respectively. Amortization on the assets recorded under capital leases is included in depreciation expense.

Included within leasehold improvements is the value attributed to the earned portion of several warrants issued to certain fiber carriers and our contractor totaling $9,883,000 and $8,105,000 as of December 31, 2002 and 2001, respectively (see Note 8). Amortization of such warrants is included in depreciation expense.

The Company included $2,234,000 of equipment held for resale within other current assets on the accompanying balance sheet as of December 31, 2001. This represented the estimated net realizable value of assets purchased during the pre-construction phase of the European IBX hubs that were being held for resale and were written down as part of a larger restructuring charge in conjunction with a revised European services strategy. This equipment was sold during 2002 for total proceeds of $1,169,000, resulting in an additional loss of $1,065,000 (see Note 13).

Restricted Cash and Short-term Investments

Restricted cash and short-term investments consisted of the following as of December 31 (in thousands):

	2002	2001
Certificates of deposit due within one year	$ —	$ 47
Restricted cash in U.S. treasury notes	—	15,450
Restricted cash in money market funds	4,407	12,547
	4,407	28,044
Less current portion	(1,981)	(47)
	$ 2,426	$ 27,997

As of December 31, 2002 and 2001, cost approximated market value of restricted cash and short-term investments; unrealized gains and losses were not significant.

Accounts Payable and Accrued Expenses

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

	2002	2001
Accounts payable	$ 7,243	$ 4,638
Accrued merger and financing costs	4,488	—
Accrued compensation and benefits	2,548	2,934
Accrued taxes	690	1,296
Accrued utility and security	771	602
Accrued professional fees	1,046	565
Accrued property and equipment	1,304	—
Accrued other	2,257	1,074
	$ 20,347	$ 11,109

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

4. Debt Facilities and Capital Lease Obligations

Debt facilities and capital lease obligations consisted of the following as of December 31 (in thousands):

	2002	2001
Comdisco Master Lease Agreement and Addendum (net of unamortized discount of $31 and $221 as of December 31, 2002 and 2001, respectively)	$ 1,820	$ 3,374
Venture Leasing Loan Agreement (net of unamortized discount of $336 and $392 as of December 31, 2002 and 2001, respectively)	1,004	3,658
Heller Loan (net of unamortized discount of $9 and $15 as of December 31, 2002 and 2001, respectively)	3,233	4,183
Wells Fargo Loan	1,631	2,335
Orix Equipment Leases	1,536	—
	9,224	13,550
Less current portion	(5,591)	(7,206)
	$ 3,633	$ 6,344

Comdisco Master Lease Agreement

In May 1999, the Company entered into a Master Lease Agreement with Comdisco (the "Comdisco Master Lease Agreement"). Under the terms of the Comdisco Master Lease Agreement, the Company sold equipment to Comdisco, which it then leased back. The amount of financing to be provided was up to $1,000,000, and this amount was fully drawn down during 1999 and 2000. Repayments are made monthly over 42 months with a final balloon interest payment equal to 15% of the balance amount due at maturity. Interest accrues at 7.5% per annum. The Comdisco Master Lease Agreement has an effective interest rate of 14.6% per annum. As of December 31, 2002, $162,000 was outstanding under the Comdisco Master Lease Agreement.

The Company leases certain leasehold improvements, computer equipment and software and furniture and fixtures under capital leases under the Comdisco Master Lease Agreement. These leases were entered into as sales-leaseback transactions. The Company deferred a gain of $78,000 related to the sale-leaseback in July 1999, and a deferred loss of $19,000 related to the sale-leasebacks in fiscal 2000, which is being amortized in proportion to the amortization of the leased assets.

In connection with the Comdisco Master Lease Agreement, the Company granted Comdisco a warrant to purchase 937 shares of the Company's common stock at $53.33 per share (the "Comdisco Master Lease Agreement Warrant"). This warrant is immediately exercisable and expires in ten years from the date of grant. The fair value of the warrant using the Black-Scholes option pricing model with the following assumptions: deemed fair market value per share of $96.00, dividend yield 0%, expected volatility of 80%, risk-free interest rate of 5.0% and a contractual life of 10 years, was $80,000. Such amount was recorded as a discount to the applicable capital lease obligation, and is being amortized to interest expense, using the effective interest method, over the life of the agreement.

Comdisco Master Lease Agreement Addendum

In August 1999, the Company amended the Comdisco Master Lease Agreement. Under the terms of the Comdisco Master Lease Agreement Addendum, the Company sold equipment (hard cost items) and software and tenant improvements (soft cost items) in its San Jose IBX hub to Comdisco, which it then leased back. The amount of financing available under the Comdisco Master Lease Agreement Addendum was up to $2,150,000 for

hard cost items and up to $2,850,000 for soft cost items, and these amounts were fully drawn during 1999 and 2000. Amounts drawn under this addendum are collateralized by the underlying hard and soft assets of the San Jose IBX hub that were funded under the Comdisco Master Lease Agreement Addendum. Repayments are made monthly over the course of 42 months. Interest accrues at 8.5% per annum, with a final balloon interest payment equal to 15% of the original acquisition cost of the property financed. The Comdisco Master Lease Agreement Addendum has an effective interest rate of 15.3% per annum. As of December 31, 2002, $1,689,000 was outstanding under the Comdisco Master Lease Agreement Addendum.

In connection with the Comdisco Master Lease Agreement Addendum, the Company granted Comdisco a warrant to purchase 4,687 shares of the Company's common stock at $96.00 per share (the "Comdisco Master Lease Agreement Addendum Warrant"). This warrant is immediately exercisable and expires in seven years from the date of grant or three years from the effective date of the Company's initial public offering, whichever is shorter. The fair value of the warrant using the Black-Scholes option pricing model with the following assumptions: deemed fair market value per share of $153.60, dividend yield 0%, expected volatility of 80%, risk-free interest rate of 5.0% and a contractual life of seven years, was $587,000. Such amount was recorded as a discount to the applicable capital lease obligation, and is being amortized to interest expense, using the effective interest method, over the life of the agreement.

Venture Leasing Loan Agreement

In August 1999, the Company entered into a Loan Agreement with Venture Lending & Leasing II, Inc. and other lenders ("VLL" and the "Venture Leasing Loan Agreement"). The Venture Leasing Loan Agreement provided financing for equipment and tenant improvements at the Newark, New Jersey IBX hub and a secured term loan facility for general working capital purposes. The amount of financing provided was up to $10,000,000, which was allowed to be used to finance up to 85% of the projected cost of tenant improvements and equipment for the Newark IBX hub. The full $10,000,000 was fully drawn during 1999. Notes issued beared interest at a rate of 8.5% per annum and were repayable in 42 monthly installments plus a final balloon interest payment equal to 15% of the original advance amount due at maturity and are collateralized by the assets of the Newark, New Jersey IBX. The Venture Leasing Loan Agreement had an effective interest rate of 14.7% per annum.

In connection with the Venture Leasing Loan Agreement, the Company granted VLL a warrant to purchase 9,375 shares of the Company's common stock at $96.00 per share (the "Venture Leasing Loan Agreement"). This warrant is immediately exercisable and expires on June 30, 2006. The fair value of the warrant using the Black-Scholes option pricing model with the following assumptions: deemed fair market value per share of $153.60, dividend yield 0%, expected volatility of 80%, risk-free interest rate of 5.0% and a contractual life of seven years, was $1,174,000. Such amount was recorded as a discount to the applicable debt, and is being amortized to interest expense, using the effective interest method, over the life of the agreement.

In October 2002, the Company amended the Venture Leasing Loan Agreement to secure certain short-term cash deferment benefits (the "VLL Loan Amendment"). Under the original terms of the Venture Leasing Loan Agreement, the Company borrowed $10,000,000 which was repayable over 42 months at 8.5% per annum plus a 15% balloon interest payment calculated on the original advance amount. Under the terms of the VLL Loan Amendment, the Company extended the maturity of the loan by 24 months. Commencing January 1, 2003, the Company will re-amortize the remaining principal balance and related balloon interest payment over the amended 27-month period ending March 1, 2005. The VLL Loan Amendment has an effective interest rate of approximately 14.7% per annum. As of December 31, 2002, $1,340,000 was outstanding under the VLL Loan Amendment.

In connection with the VLL Loan Amendment, the Company granted VLL warrants to purchase 32,187 shares of the Company's common stock at $0.32 per share (the "VLL Loan Amendment Warrants") and repriced the original remaining VLL Warrants, issued in August 1999, to have an exercise price of $0.32 versus the original $96.00 per share (the "Amended and Restated Original VLL Warrants"). Both the VLL Loan Amendment Warrants and the Amended and Restated Original VLL Warrants are immediately exercisable and the VLL Loan Amendment Warrants expire on October 11, 2007 and the Amended and Restated Original VLL Warrants expire on the original expiration date of June 30, 2006. The fair value of the VLL Loan Amendment Warrants using the Black-Scholes option-pricing model was approximately $220,000 with the following assumptions: fair market value per share of $7.04, dividend yield of 0%, expected volatility of 100%, risk-free interest rate of 4.0% and a contractual life of five years. Such amount was recorded as a discount to the applicable debt based upon the guidance of APB Opinion No. 14 and will be amortized to interest expense, using the effective interest method, over the remaining life of the VLL Loan Amendment. Following the modification of the Amended and Restated Original VLL Warrants, an additional charge of approximately $45,000 was recorded as an additional debt discount representing the difference between the fair value of the modified option determined in accordance with the provisions of SFAS No. 123 and the value of the old warrants immediately before its terms were modified.

Heller Loan

In June 2001, the Company obtained a $5,000,000 loan from Heller Financial Leasing, Inc. (the "Heller Loan"), which was fully drawn down at that time. Repayments on the Heller Loan were made over 36 months and interest accrued at 13.0% per annum. The Heller Loan is secured by certain equipment located in the New York metropolitan area IBX hub.

In connection with the Heller Loan, the Company granted Heller Financial Leasing, Inc. a warrant to purchase 1,171 shares of the Company's common stock at $128.00 per share (the "Heller Warrant"). This warrant is immediately exercisable and expires in five years from the date of grant. The fair value of the warrant using the Black-Scholes option pricing model was $18,000 with the following assumptions: fair market value per share of $36.16, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 5% and a contractual life of 5 years. Such amount was recorded as a discount to the applicable loan amount, and is being amortized to interest expense using the effective interest method, over the life of the loan.

In August 2002, the Company amended the Heller Loan to secure certain short-term cash deferment benefits (the "Heller Loan Amendment"). Under the original terms of the Heller Loan, the Company borrowed $5,000,000 which was repayable over 36 months at 13% per annum. Under the terms of the Heller Loan Amendment, the Company extended the maturity of the loan by nine months. Commencing September 2002, the Company began to benefit from the reduction in monthly payments over the following 14 months thereby deferring approximately $1,200,000 of principal payments. Commencing November 2003, the deferred principal payments began to be repaid over the remaining 17 months of the loan ending March 2005. The Heller Loan Amendment has an effective interest rate of approximately 16.5% per annum. As of December 31, 2002, $3,242,000 was outstanding under the Heller Loan Amendment.

The costs related to the issuance of the Heller Loan were capitalized and are being amortized to interest expense using the effective interest method, over the life of the Heller Loan. Debt issuance costs, net of amortization, are $167,000 as of December 31, 2002.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Wells Fargo Loan

In March 2001, the Company obtained a $3,004,000 loan from Wells Fargo Equipment Finance, Inc. ("Wells Fargo" and the "Wells Fargo Loan"), and this amount was fully drawn down at that time. Repayments on the Wells Fargo Loan are made over 36 months and interest accrues at 13.15% per annum. The Wells Fargo Loan is secured by certain equipment located in the New York metropolitan area IBX hub. The Wells Fargo Loan required the Company to maintain a minimum cash balance at all times. As of June 30, 2002, the Company was not in compliance with this requirement. The Company did not obtain a waiver for this requirement and the bank rejected a discounted settlement offer. Wells Fargo filed a lawsuit against the Company seeking to force the Company to obtain a letter of credit in the full amount of the outstanding balance of the Wells Fargo Loan. As a result, the Company has reflected the full amount outstanding under this facility totaling $1,631,000 as a current obligation on the accompanying balance sheet as of December 31, 2002. In January 2003, the Company entered into a settlement agreement with Wells Fargo and repaid the full amount outstanding, plus accrued and unpaid interest, in February 2003 (see Note 14).

The costs related to the issuance of the Wells Fargo Loan were capitalized and are being amortized to interest expense using the effective interest method, over the life of the Wells Fargo Loan. Debt issuance costs, net of amortization, are $58,000 as of December 31, 2002. This remaining balance was written-off to interest expense in February 2003 in conjunction with the settlement.

Orix Equipment Leases

In December 2002, as a result of the Pihana Acquisition (see Note 2), the Company acquired multiple capital leases in multiple currencies for various newly acquired subsidiaries of the Company in the U.S. and Asia-Pacific covered under a Master Lease Agreement with Sun Microsystems, Inc., which was subsequently assigned to Orix USA Corporation (the "Orix Equipment Leases"). The original amount financed under these capital leases was approximately $3,503,000 (as translated using effective exchange rates at December 31, 2002). These capital lease arrangements bear interest at an average rate of 6.4% per annum and are repayable over 30 months. As of December 31, 2002, $1,536,000 was outstanding under the Orix Equipment Leases (as translated using effective exchange rates at December 31, 2002).

Maturities

Combined aggregate maturities for debt facilities and future minimum capital lease obligations as of December 31, 2002 are as follows (in thousands):

	Debt facilities	Capital lease obligations	Total
2003	$ 2,887	$ 2,965	$ 5,852
2004	2,597	422	3,019
2005	729	—	729
	6,213	3,387	9,600
Less amount representing unamortized discount	(345)	(31)	(376)
	5,868	3,356	9,224
Less current portion	(2,657)	(2,934)	(5,591)
	$ 3,211	$ 422	$ 3,633

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

5. Senior Notes

On December 1, 1999, the Company issued 200,000 units, each consisting of a $1,000 principal amount 13% Senior Note due 2007 (the "Senior Notes") and one warrant to purchase .527578 shares (for an aggregate of 105,515 shares) of common stock for $0.2144 per share (the "Senior Note Warrants"), for aggregate net proceeds of $193,400,000, net of offering expenses. Of the $200,000,000 gross proceeds, $16,207,000 was allocated to additional paid-in capital for the deemed fair value of the Senior Note Warrants and recorded as a discount to the Senior Notes. The discount on the Senior Notes is being amortized to interest expense, using the effective interest method, over the life of the debt. The Senior Notes have an effective interest rate of 14.1% per annum. The fair value attributed to the Senior Note Warrants was consistent with the Company's treatment of its other common stock transactions prior to the issuance of the Senior Notes. The fair value was based on recent equity transactions by the Company.

Interest is payable semi-annually, in arrears, on June 1 and December 1 of each year. The notes are unsecured, senior obligations of the Company and are effectively subordinated to all existing and future indebtedness of the Company, whether or not secured.

The Senior Notes are governed by the Indenture dated December 1, 1999, between the Company, as issuer, and State Street Bank and Trust Company of California, N.A., as trustee (the "Indenture"). Subject to certain exceptions, the Indenture restricts, among other things, the Company's ability to incur additional indebtedness and the use of proceeds therefrom, pay dividends, incur certain liens to secure indebtedness or engage in merger transactions.

During the first half of 2002, the Company retired $52,751,000 of Senior Notes plus forgiveness of $785,000 of accrued and unpaid interest thereon in exchange for 499,565 shares of the Company's common stock, valued at $18,351,000 based on the actual exchange dates of the Senior Notes and $2,511,000 of cash. The Company wrote-off a proportionate amount of unamortized debt issuance costs and debt discount associated with these Senior Notes totaling $1,293,000 and $3,093,000, respectively. The Company incurred debt extinguishment costs totaling approximately $1,100,000 in connection with the retirement of these Senior Notes and recognized a gain on these transactions of $27,188,000.

In December 2002, the Company, in connection with, and as a condition to closing the Combination (see Note 2) and Financing (see Note 7), initiated an exchange offer to substantially reduce the amount of Senior Notes then outstanding in order to improve the Company's existing capital structure and reduce the amount of outstanding debt of the Company (the "Senior Note Exchange"). The Senior Note Exchange was contingent on both the Combination and Financing closing, all of which were subject to stockholder vote. The Combination, Financing and Senior Note Exchange closed on December 31, 2002, and the Company retired an additional $116,774,000 of Senior Notes plus forgiveness of $8,855,000 of accrued and unpaid interest thereon in exchange for 1,857,436 shares of the Company's common stock, valued at $12,482,000 based on the actual exchange date of the Senior Notes and $15,181,000 of cash. The Company wrote-off a proportionate amount of unamortized debt issuance costs and debt discount associated with these Senior Notes totaling $2,492,000 and $6,004,000, respectively. The Company incurred debt extinguishment costs totaling approximately $2,500,000 in connection with the retirement of these Senior Notes and recognized a gain on these transactions of $86,970,000. In conjunction with the Combination, Financing and Senior Note Exchange, the Company amended the Indenture in order to allow the Combination and Financing to occur.

As of December 31, 2002, the Company had a total of $30,475,000 Senior Notes remaining outstanding, which are presented net of remaining discount as $28,908,000 on the accompanying balance sheet.

The costs related to the issuance of the Senior Notes were capitalized and are being amortized to interest expense using the effective interest method, over the life of the Senior Notes. Debt issuance costs, net of amortization and write-offs associated with debt retirement, are $650,000 as of December 31, 2002.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Credit Facility

On December 20, 2000, the Company and a newly created, wholly-owned subsidiary of the Company, entered into a $150,000,000 Credit Facility (the "Credit Facility") with a syndicate of lenders. The Credit Facility consisted of the following:

- Term loan facility in the amount of $50,000,000. The outstanding term loan amount was required to be paid in quarterly installments beginning in March 2003 and ending in December 2005. The Company drew this down in January 2001.
- Delayed draw term loan facility in the amount of $75,000,000. The Company was required to borrow the entire facility on or before December 20, 2001. The outstanding delayed draw term loan amount was required to be paid in quarterly installments beginning in March 2003 and ending in December 2005. The Company drew this down in March 2001.
- Revolving credit facility in an amount up to $25,000,000. The outstanding revolving credit facility was required to be paid in full on or before December 15, 2005. The Company drew this down in June 2001.

The Credit Facility had a number of covenants, which included achieving certain minimum revenue targets and limiting cumulative EBITDA losses and maximum capital spending limits among others. As of September 30, 2001, the Company was not in compliance with one of these covenants. However, the syndicate of lenders provided a forbearance and, in October 2001, the Company successfully completed the renegotiation of the Credit Facility and amended certain of the financial covenants to reflect the prevailing economic environment as part of the Amended and Restated Credit Facility (the "Amended and Restated Credit Facility"). As required under this amendment, the Company repaid $50,000,000 of the $150,000,000 Credit Facility outstanding as of September 30, 2001, of which $25,000,000 represented a permanent reduction. As such, the Amended and Restated Credit Facility provides a total of $125,000,000 of debt financing and consists of the following:

- Term loan facility, redesignated as tranche A, in the amount of $100,000,000, which represents the remaining $100,000,000 outstanding after repayment of the $50,000,000 in October 2001.
- Term loan facility, redesignated as tranche B, in the amount of $25,000,000, of which $5,000,000 was immediately drawn with the remaining $20,000,000 available for future draw. The remaining $20,000,000 is only available for drawdown commencing September 30, 2002 and only if the Company remains in full compliance with all covenants as outlined in the Amended and Restated Credit Facility, and meets an additional EBITDA test. The ability to draw on the remaining $20,000,000 expires on December 31, 2002.

As of June 30, 2002, the Company was not in compliance with certain provisions, including the revenue covenant, of the Amended and Restated Credit Facility. As a result, in August 2002, the Company further amended the Amended and Restated Credit Facility (the "First Amendment to the Amended and Restated Credit Facility"). The most significant terms and conditions of the First Amendment to the Amended and Restated Credit Facility were as follows:

- The Company was granted a full waiver for the covenants that were not in compliance as of June 30, 2002. In addition, the amendment reset the minimum revenue and cash balance and maximum EBITDA loss covenants through September 30, 2002.
- The Company agreed to repay $5,000,000 of the then outstanding balance of $105,000,000 as of June 30, 2002, which was designated as a tranche B term loan. This amount was repaid in August 2002. In addition, the remaining $20,000,000 available for borrowing under the Amended and Restated Credit Facility, also designated as a tranche B term loan, was permanently eliminated. As a result, the First

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Amendment to the Amended and Restated Credit Facility reduced the credit facility to a $100,000,000 credit facility, which was designated a tranche A term loan, and which remained fully outstanding as of September 30, 2002.

- The Company must convert at least $100,000,000 of Senior Notes into common stock or convertible debt on or before November 8, 2002. As of September 30, 2002, a total of $147,249,000 of Senior Note principal remained outstanding.

In November 2002, the lenders agreed to waive certain conditions of the First Amendment to the Amended and Restated Credit Facility (the "November 2002 Waiver"). The most significant terms and conditions of the November 2002 Waiver were as follows:

- The Company was granted a waiver to reset the minimum revenue and maximum EBITDA loss covenants through December 31, 2002 and the minimum cash balance covenant through March 31, 2003.
- The Company was granted a waiver, subject to certain conditions, of an event of default created by a minimum cash covenant default and a payment default, if any, in existence pursuant to the Wells Fargo Loan (see Note 4).
- The Company was granted a waiver of the covenant requiring the Company to convert $100,000,000 of Senior Notes by November 8, 2002.
- The Company was granted a waiver, subject to certain conditions, of a default or an event of default created by a failure by the Company to make the interest payment due on the Senior Notes in December 2002.

The November 2002 Waiver expired upon the earlier of the closing of the Second Amendment to the Amended and Restated Credit Facility, the termination of the Combination, or December 31, 2002, provided that if the sole reason the Combination has not closed by that date is as a result of pending regulatory and related approvals, the date may be extended for up to three successive 30-day periods, but such date shall not be extended past March 31, 2003.

On December 31, 2002, the Company closed the Combination (see Note 2), Financing (see Note 7) and Senior Note Exchange (see Note 5), and in conjunction, the Company further amended the First Amendment to the Amended and Restated Credit Facility (the "Second Amendment to the Amended and Restated Credit Facility"). The most significant terms and conditions of the Second Amendment to the Amended and Restated Credit Facility are as follows:

- The Company was granted a full waiver of previous covenant breaches and was granted consent to use cash in connection with the Senior Note Exchange (see Note 5);
- future revenue and EBITDA covenants were eliminated and the remaining minimum cash balance and maximum capital expenditure covenants and other ratios were reset consistent with the expected future performance of the combined company for the remaining term of the loan;
- the Company permanently repaid $8,490,000 of the then currently outstanding $100,000,000 balance, bringing the total amount owed under this facility to $91,510,000 as of December 31, 2002; and
- the amortization schedule for the remaining amount owed under this facility was amended such that the minimum amortization due in 2003-2004 was significantly reduced.

Loans under the Second Amendment to the Amended and Restated Credit Facility bear interest at floating rates, plus applicable margins, based on either the prime rate or LIBOR. Interest rates on the First Amendment to

the Amended and Restated Credit Facility were increased by 0.50% and the frequency of interest payments had been amended to monthly from quarterly, and such modifications remain in effect under the terms of the Second Amendment to the Amended and Restated Credit Facility. As of December 31, 2002, the Company's total indebtedness under the Second Amendment to the Amended and Restated Credit Facility was $91,510,000 and had an effective interest rate of 6.21%.

Repayment of principal under the Second Amendment to the Amended and Restated Credit Facility is summarized as follows as of December 31, 2002 (in thousands):

Year ending:		
2003	$	1,981
2004		6,981
2005		82,548
Total	$	91,510

Borrowings under the Second Amendment to the Amended and Restated Credit Facility are collateralized by a first priority lien against substantially all of the Company's assets.

The costs related to the issuance of the Credit Facility were capitalized and are being amortized to interest expense using the effective interest method, over the life of the Credit Facility. As a result of amending and restating the Credit Facility in both 2001 and 2002, the Company incurred additional fees of approximately $1,519,000 and $1,300,000, respectively, which have been added to debt issuance costs and are being amortized to interest expense using the effective interest method over the remaining life of the Second Amendment to the Amended and Restated Credit Facility. Total debt issuance costs, net of amortization, were $5,757, 000 and $5,940,000 as of December 31, 2002 and December 31, 2001, respectively.

7. The Financing

In conjunction with the Combination (see Note 2), STT Communications made a $30,000,000 strategic investment in the Company (the "Financing") in the form of a convertible secured note (the "Convertible Secured Note"), convertible into shares of preferred stock, with a detachable warrant for the further issuance of 965,674 shares of preferred stock (the "Convertible Secured Note Warrant"). The Convertible Secured Note bears non-cash interest at a rate of 14% per annum, payable semi-annually in arrears on May 1 and November 1, and has an initial term of five years. Interest on the Convertible Secured Note will be payable in kind in the form of additional convertible secured notes having a principal amount equal to the amount of interest then due having terms which are identical to the terms of the Convertible Secured Note (the "PIK Notes").

The Convertible Secured Note Warrant was valued at $4,646,000 and is reflected as a discount to the Convertible Secured Note on the accompanying consolidated balance sheet as of December 31, 2002. The fair value of the Convertible Secured Note Warrant was calculated under the provisions of APB 14 and determined using the Black-Scholes option-pricing model under the following assumptions: contractual life of five years, risk-free interest rate of 4%, expected volatility of 135% and no expected dividend yield. 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 Secured Note does 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 allocated value to the Convertible Secured Note Warrant of $4,646,000 will be amortized using the effective interest rate method to interest expense over the five-year term of the Convertible Secured Note.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Convertible Secured Note is secured by (i) a first priority security interest in i-STT's assets and Pihana's Singapore assets and by a pledge of the stock of i-STT's subsidiaries and (ii) by a second priority security interest in all of the collateral securing the Company's obligations under the Credit Facility, as amended. The Convertible Secured Note is guaranteed by all of the Company's existing subsidiaries and by all of the Company's future domestic subsidiaries.

The Convertible Secured Note, the Convertible Secured Note Warrant and any outstanding PIK Notes can be converted into shares of the Company's Series A or Series A-1 preferred stock at a price of $10.7712 per underlying share at any time at the option of STT Communications (the "Conversion Price"). The Conversion Price will be adjusted to mitigate or prevent dilution if fundamental changes occur to the Company's common stock, dividends are declared, or the Company issues, or contracts to issue, shares of the Company's common stock at a price per share below the Conversion Price. Through December 31, 2005, the Company may convert 95% of the Convertible Secured Note and after December 31, 2005, the Company may convert 100% of the Convertible Secured Note, if:

- the closing price of the Company's common stock exceeds $37.6992 for thirty consecutive trading days;
- the average daily trading volume of the Company's common stock during that thirty day trading window exceeds 17,188; and
- the Company has caused a registration statement to become effective under the Securities Act which provides for the resale by the noteholders of the shares of the Company's common stock issued or issuable upon conversion.

The Company must offer to purchase the Convertible Secured Note and any outstanding PIK Notes together with any accrued and unpaid interest if the Company experiences a change of control, as defined. In addition, in connection with the Financing, the Company issued a warrant to STT Communications, which will become exercisable if the Company does experience a change of control (the "Change in Control Warrant"). The Change of Control Warrant, which has an exercise price of $0.01 per share and a contractual life of five years, is contingently exercisable for shares of the Company's common stock with a total current market value of up to 20% of:

- the $30,000,000 principal amount of the Convertible Secured Note, plus
- the principal amount of any issued and outstanding PIK Notes, minus
- the principal amount of any portion of the Convertible Secured Note which has been converted into shares of the Company's capital stock or repaid in cash, plus
- accrued and unpaid interest on any then outstanding portion of the Convertible Secured Note.

Furthermore, the Company, in order to provide a mechanism to allow STT Communications to ensure the Company's compliance with covenants under the Second Amendment to the Amended and Restated Credit Facility (see Note 6), issued two additional warrants to STT Communications in conjunction with the Financing. These two additional warrants, comprised of the Series A Cash Trigger Warrant and the Series B Cash Trigger Warrant (collectively, the "Cash Trigger Warrants"), are contingently exercisable if the Company (i) does not have sufficient funds to pay, and fails to pay when due, any principal, interest, fee or other amount due under the Second Amendment to the Amended and Restated Credit Facility, or (ii) breaches the Company's obligations to maintain certain minimum cash balances under the terms of the Second Amendment to the Amended and Restated Credit Facility. The Cash Trigger Warrants, which will have a contractual life for as long as the Company has any remaining amounts due under the Second Amendment to the Amended and Restated Credit

Facility, will have an exercise price and be exercisable for shares of the Company's common stock valued at up to $30,000,000 as follows:

- The Series A Cash Trigger Warrant will have a value of $10,000,000, with an exercise price per share which is the lesser of (i) $9.792 or (ii) 90% of the then current market value of shares of the Company's common stock. The $9.792 exercise price of the Series A Cash Trigger Warrant will be adjusted to mitigate or prevent dilution if fundamental changes occur to the Company's common stock, dividends are declared, or the Company issues, or contracts to issue, shares of the Company's common stock at a price per share below $9.792.
- The Series B Cash Trigger Warrant will have a value of $20,000,000, with an exercise price per share equal to 90% of the then current market value of shares of the Company's common stock.

The holder of the Cash Trigger Warrants, STT Communications, has no obligation to exercise such warrants. If the Cash Trigger Warrants are exercised based on the inability to pay any principal, interest or fees due under the Second Amendment to the Amended and Restated Credit Facility, the Cash Trigger Warrants will be exercisable for not less than $5,000,000 and not more than $5,000,000 plus the amount of the missed payment. If the Cash Trigger Warrants are exercised on the inability of Company to maintain certain minimum cash balances under the terms of the Second Amendment to the Amended and Restated Credit Facility, the Cash Trigger Warrants will be exercisable for not less than $5,000,000 and not more than $5,000,000 plus any shortfall in the Company's minimum cash balance requirement.

The Company applied EITF 00-27, "Application of Issue No. 98-5 to Certain Convertible Instruments," and EITF 96-18, "Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services," and concluded that neither a commitment date, or a measurement date, had occurred when the Financing was closed as of December 31, 2002 in relation to the Change in Control Warrant and the Cash Trigger Warrants. As a result, the Change in Control Warrant and the Cash Trigger Warrants have been treated, and will continue to be treated, as unissued for accounting purposes until such time as the events that trigger the right to the issuance of shares of the Company's stock as outlined in these warrants have occurred, if ever.

The costs related to the Financing were capitalized and are being amortized to interest expense using the effective interest method, over the life of the Convertible Secured Note. Debt issuance costs, net of amortization, are $617,000 as of December 31, 2002.

8. Redeemable Convertible Preferred Stock and Stockholders' Equity

In May 2000, the Company amended and restated its Certificate of Incorporation to change the authorized share capital to 80,000,000 shares of common stock and 43,000,000 shares of redeemable convertible preferred stock, of which 20,000,000 has been designated as Series A, 16,000,000 has been designated as Series B and 7,000,000 has been designated as Series C.

In August 2000, the Company amended and restated its Certificate of Incorporation to change the authorized share capital to 300,000,000 shares of common stock and 10,000,000 shares of preferred stock.

In December 2002, the Company amended and restated its Certificate of Incorporation to change the authorized share capital to 300,000,000 shares of common stock and 100,000,000 shares of preferred stock, of which 25,000,000 has been designated Series A, 25,000,000 has been designated as Seriec A-1 and 50,000,000 is undesignated.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Redeemable Convertible Preferred Stock

Between May and June 2000, the Company completed its Series C redeemable convertible preferred stock financing. The Company issued 195,661 shares of Series C redeemable convertible preferred stock, at a price of $482.56 per share.

All 1,271,877 shares of Series A, Series B and Series C redeemable convertible preferred stock were converted to shares of common stock on a one-for-one basis upon the closing of the Company's initial public offering ("IPO") in August 2000. All outstanding warrants to purchase preferred stock are now exercisable for common stock.

Preferred Stock

On December 31, 2002, as a result of the i-STT Acquisition (see Note 2), the Company issued 1,868,667 shares of Series A preferred stock to STT Communications. As of December 31, 2002, this preferred stock had a total liquidation value of $18,298,000.

The rights, preferences and privileges of the Series A and Series A-1 preferred stock are as follows:

Voting Rights. Holders of Series A preferred stock are entitled to one vote for each share of common stock into which such preferred stock could then be converted. Except as otherwise provided by the Delaware General Corporation Law, Series A-1 preferred stock shall have no voting rights. Until the earlier of either December 31, 2004 or the date on which less than 100 shares of the Company's Series A preferred stock remain outstanding, the holders of shares of Series A preferred stock will be entitled to elect a number of directors at any election of directors, as follows:

- three directors for so long as the holders of Series A preferred stock collectively beneficially own at least 30% of the Company's outstanding voting stock;
- two directors for so long as the holders of Series A preferred stock collectively beneficially own at least 15% of the Company's outstanding voting stock;
- one director for so long as the holders of Series A preferred stock collectively beneficially own at least 100 shares of the Company's outstanding voting stock; and
- no directors at such time as the holders of Series A preferred stock collectively beneficially own less than 100 of the Company's outstanding voting stock.

Dividend Rights. Holders of Series A preferred stock and Series A-1 preferred stock are entitled to receive an amount equal to any dividend paid on the Company's common stock as may be declared from time to time by the Company's board of directors.

Liquidation Rights. In the event of the Company's liquidation, dissolution or winding up, the Company's assets available for distribution to stockholders will be distributed to holders of common stock, Series A preferred stock and Series A-1 preferred stock on a pro rata basis, based on the number of shares of common stock held by each assuming full conversion of Series A preferred stock and Series A-1 preferred stock, until holders of Series A preferred stock and Series A-1 preferred stock have received $9.792 per share of Series A preferred stock and Series A-1 preferred stock, plus the amount of any declared but unpaid dividends for each share of Series A preferred stock and Series A-1 preferred stock. Thereafter, any remaining available assets for distribution to stockholders will be distributed among the holders of the Company's common stock pro rata based on the number of shares of common stock held by each.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Redemption Rights. Beginning after December 31, 2009, the Company may at any time it may lawfully do so, at the option of the Company's board of directors, redeem some or all of the Series A preferred stock or Series A-1 preferred stock, on a pro rata basis, at a price in cash per share equal to the number of shares of the Company's common stock into which such share may then be converted multiplied by the average closing sale price of the Company's common stock on The Nasdaq National Market (or any trading system on which the Company's common stock may then trade) over the 30 consecutive trading day period ending five trading days prior to the date of redemption. There are no sinking fund provisions applicable to the Company's Series A preferred stock or Series A-1 preferred stock.

Conversion and Other Rights. The Company's Series A preferred stock is convertible at any time into shares of common stock on a one-for-one basis. The Company's Series A-1 preferred stock is convertible into Series A preferred stock or shares of common stock on a one-for-one basis as long as (i) the conversion of the Series A-1 preferred stock will not cause STT Communications to hold more than 40% of outstanding voting stock and (ii) the value of all outstanding voting stock held by STT Communications will not exceed $50.0 million or any threshold that would require compliance with the HSR Antitrust Improvements Act of 1976, as amended (the "HSR Act"), unless STT Communications has previously complied with the HSR Act. Notwithstanding these limitations, and except for limitations imposed by the HSR Act, the Company's Series A-1 preferred stock is convertible into Series A preferred stock or common stock in the following circumstances:

- STT Communications makes a fully financed tender offer for all of the Company's outstanding stock and at least 50% of the outstanding shares not held by STT Communications are tendered;
- the Company commences bankruptcy or reorganization proceedings;
- a third party obtains a 15% interest in the Company;
- the Company agrees to sell a 15% or greater interest in the Company to a third party;
- the Company sells all or substantially all of its assets, or enters into an agreement to sell all or substantially all of its assets;
- a third party commences a bona fide, fully financed tender offer;
- STT Communications' nominees are not elected to our board of directors despite STT Communications voting in favor of such nominees;
- the Company breaches certain material agreements with STT Communications contained in the Financing or Combination agreements (see Notes 2 and 7);
- STT Communications' interest in the Company falls below 10%; or
- the Cash Trigger Warrants are exercised (see Note 7).

In addition, the Company may force all but 100 shares of the Company's Series A preferred stock and all shares of Series A-1 preferred stock (subject to the conversion restrictions described above) to convert into shares of the Company's common stock after the Company reports four consecutive quarters of net income.

The Company's Series A and Series A-1 preferred stock have no preemptive or other subscription rights.

Common Stock

On August 11, 2000 the Company completed an IPO of 625,000 shares of its common stock. On September 7, 2000 the underwriters exercised their option to purchase 84,399 shares to cover the over-allotment of shares.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's founders purchased 189,375 shares of common stock. Approximately 170,437 shares were subject to restricted stock purchase agreements whereby the Company had the right to repurchase the stock upon voluntary or involuntary termination of the founder's employment with the Company at $0.00033 per share. The Company's repurchase right lapsed at a rate of 25% per year. In May 2000, the Board of Directors agreed to waive the repurchase right with respect to one of the founder's unvested shares. As of December 31, 2002 and 2001, zero and 10,652 shares were subject to repurchase at a price of $0.00033 per share, respectively.

Upon the exercise of certain unvested stock options, the Company issued to employees common stock which is subject to repurchase by the Company at the original exercise price of the stock option. This right lapses over the vesting period. As of December 31, 2002 and 2001, there were 6,986 and 33,548 shares, respectively, subject to repurchase.

As of December 31, 2002, the Company has reserved the following shares of authorized but unissued shares of common stock for future issuance:

Conversion of convertible secured note	2,785,205
Conversion of issued and outstanding preferred stock	1,868,667
Conversion of preferred stock warrant	965,674
Common stock warrants	302,792
Common stock options	5,478,659
Common stock purchase plan	35,634
	11,436,631

Stock Purchase Plan

In May 2000, the Company adopted the Employee Stock Purchase Plan (the "Purchase Plan") under which 31,250 shares were reserved for issuance thereafter. On each January 1, the number of shares in reserve will automatically increase by 2% of the total number of shares of common stock outstanding at that time, or, if less, by 600,000 shares. The Purchase Plan permits purchases of common stock via payroll deductions. The maximum payroll deduction is 15% of the employee's cash compensation. Purchases of the common stock will occur on February 1 and August 1 of each year. The price of each share purchased will be 85% of the lower of:

- The fair market value per share of common stock on the date immediately before the first day of the applicable offering period (which lasts 24 months); or
- The fair market value per share of common stock on the purchase date.

The value of the shares purchased in any calendar year may not exceed $25,000.

As of December 31, 2002, 33,116 shares had been issued under the Purchase Plan during fiscal 2002 and 2001 at a weighted-average purchase price of $57.31 per share. There were no purchases under the Purchase Plan during fiscal 2000.

Stock Option Plans

In September 1998, the Company adopted the 1998 Stock Plan. In May 2000, the Company adopted the 2000 Equity Incentive Plan and 2000 Director Stock Option Plan; and in September 2001, the Company adopted the 2001 Supplemental Stock Plan (collectively, the "Plans") under which nonstatutory stock options and restricted stock may be granted to employees, outside directors, consultants, and incentive stock options may be

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

granted to employees. Accordingly, the Company reserved a total of 5,708,326 shares of the Company's common stock for issuance upon the grant of restricted stock or exercise of options granted in accordance with the Plans. On each January 1, commencing with the year 2001, the number of shares in reserve will automatically increase by 6% of the total number of shares of common stock that are outstanding at that time or, if less, by 6,000,000 shares for the 2000 Equity Incentive Plan and by 50,000 shares for the 2000 Director Stock Option Plan. Options granted under the Plans generally expire 10 years following the date of grant and are subject to limitations on transfer. The Plans are administered by the Board of Directors.

The Plans provide for the granting of incentive stock options at not less than 100% of the fair market value of the underlying stock at the grant date. Nonstatutory options may be granted at not less than 85% of the fair market value of the underlying stock at the date of grant.

Option grants under the Plans are subject to various vesting provisions, all of which are contingent upon the continuous service of the optionee and may not impose vesting criterion more restrictive than 20% per year. Stock options may be exercised at anytime subsequent to grant. Stock obtained through exercise of unvested options is subject to repurchase at the original purchase price. The Company's repurchase right decreases as the shares vest under the original option terms.

Options granted to stockholders who own greater than 10% of the outstanding stock must have vesting periods not to exceed five years and must be issued at prices not less than 110% of the fair market value of the stock on the date of grant as determined by the Board of Directors. Upon a change of control, all shares granted under the Plans shall immediately vest.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

A summary of the Plans is as follows:

	Shares available for grant	Number of shares	Weighted-average exercise price per share
Balances, December 31, 1999	479,598	81,755	$ 21.67
Additional shares authorized	1,642,609	—	—
Options granted	(258,885)	258,885	176.61
Options exercised	—	(44,442)	55.71
Options forfeited	14,442	(14,442)	168.50
Shares repurchased	(10,824)	—	2.90
Balances, December 31, 2000	1,888,588	281,756	150.99
Additional shares authorized	2,394,356	—	—
Options granted	(497,700)	497,700	44.20
Options exercised	—	(15,534)	28.03
Options forfeited	110,762	(110,762)	138.31
Shares repurchased	7,807	—	2.28
Balances, December 31, 2001	3,903,813	653,160	74.26
Additional shares authorized	934,651	—	—
Options granted	(147,244)	147,244	26.75
Options exercised	—	(12,965)	8.67
Options forfeited	61,618	(61,618)	77.66
Balances, December 31, 2002	4,752,838	725,821	65.51

The following table summarizes information about stock options outstanding as of December 31, 2002:

	Outstanding			Exercisable	
Range of exercise prices	Number of shares	Weighted-average remaining contractual life	Weighted-average exercise price	Number of shares	Weighted-average exercise price
$ 0.03 to $ 8.64	21,923	7.84	$ 4.26	11,265	$ 2.13
$ 10.24 to $ 15.68	205,289	8.76	12.18	124,789	12.17
$ 16.96 to $ 24.96	45,625	9.18	22.17	2,174	20.94
$ 27.84 to $ 56.00	206,126	8.59	34.68	57,952	37.60
$ 61.76 to $ 93.00	13,202	8.23	80.99	5,143	83.48
$100.80 to $160.00	186,071	7.60	132.73	110,782	134.26
$176.00 to $384.00	47,585	7.58	231.65	28,346	232.62
	725,821	8.32	65.51	340,451	75.38

The weighted-average remaining contractual life of options outstanding at December 31, 2002 and December 31, 2001 was 8.32 years and 9.09 years, respectively.

Stock-Based Compensation

Employees

The Company uses the intrinsic-value method prescribed in APB No. 25 in accounting for its stock-based compensation arrangements with employees. Stock-based compensation expense is recognized for employee stock option grants in those instances in which the deemed fair value of the underlying common stock was

subsequently determined to be greater than the exercise price of the stock options at the date of grant. The Company recorded a reduction of $1,161,000 of deferred stock-based compensation due to forfeitures of pre-IPO stock options for the year ended December 31, 2002. The Company recorded a reduction of $8,119,000 of deferred stock-based compensation due to forfeitures of pre-IPO stock options for the year ended December 31, 2001. The Company recorded deferred stock-based compensation, net of forfeitures, related to employees of $53,206,000 for the year ended December 31, 2000. A total of $6,859,000, $18,993,000 and $28,796,000 has been amortized to stock-based compensation expense for the years ended December 31, 2002, 2001 and 2000, respectively, on an accelerated basis over the vesting period of the individual options, in accordance with FASB Interpretation No. 28. The weighted average estimated fair value of employee stock options granted at exercise prices below market price at grant during 2000 was $276.48.

Non-Employees

The Company uses the fair value method to value options granted to non-employees. In connection with its grant of options to non-employees, the Company has recognized a reduction in deferred stock-based compensation of $118,000 for the year ended December 31, 2002 and $164,000 for the year ended December 31, 2001 due to a reduction in the fair value of the Company's stock during this period, and an increase in deferred stock-based compensation of $1,332,000 for the year ended December 31, 2000. A total of $19,000, $51,000 and $1,097,000 has been amortized to stock-based compensation expense for the years ended December 31, 2002, 2001, and 2000, respectively. There were no non-employee stock option grants during 2002. The weighted average estimated fair value of non-employee stock options granted at exercise prices below market price at grant during 2001 and 2000 was $37.44 and $10.88 per share, respectively.

The Company's calculations for non-employee grants were made using the Black-Scholes option-pricing model with the following weighted average assumptions for the years ended December 31:

	2002	2001	2000
Dividend yield	0%	0%	0%
Expected volatility	135%	80%	80%
Risk-free interest rate	4.00%	5.14%	5.99%
Expected life (in years)	10.00	10.00	10.00

Warrants

In August 1999, the Company entered into a strategic agreement with NorthPoint Communications, Inc. ("NorthPoint"). Under the terms of the strategic agreement, NorthPoint has agreed to use certain of the Company's domestic IBX hubs and install their operational nodes in such centers. In exchange, the Company granted NorthPoint a warrant to purchase 10,567 shares of the Company's common stock at $17.07 per share (the "NorthPoint Warrant"). The NorthPoint Warrant was earned upon execution of the strategic agreement, as NorthPoint's performance commitment was complete. The NorthPoint Warrant was immediately exercisable and expired five years from the date of grant. The NorthPoint Warrant was valued at $1,508,000 using the Black-Scholes option-pricing model, which was capitalized on the accompanying consolidated balance sheet in other assets as a customer acquisition cost and was being amortized over the term of the agreement as a reduction of revenues recognized. The following assumptions were used in determining the fair value of the warrant: deemed fair market value per share of $153.60, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 5.0% and a contractual life of 5 years. In December 2000, based on the uncertainty of the Company's future business relationship with NorthPoint, as a result of their filing under Chapter 11 bankruptcy protection, the Company determined that the future value of the other asset attributed to the unamortized portion of the fully-vested, nonforfeitable warrant was questionable and accordingly, the remaining asset totaling approximately $700,000 was written off.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In November 1999, the Company entered into a definitive agreement with WorldCom, whereby WorldCom agreed to install high-bandwidth local connectivity services to the Company's first seven IBX hubs by a pre determined date in exchange for a warrant to purchase 21,094 shares of common stock of the Company at $21.33 per share (the "WorldCom Warrant"). The WorldCom Warrant was immediately exercisable and expires five years from the date of grant. As of December 31, 1999, a total of 18,750 shares were subject to repurchase at the original exercise price if WorldCom's performance commitments were not completed. The WorldCom Warrant was initially valued at $2,969,000 using the Black-Scholes option-pricing model and was recorded to construction in progress. Under the applicable guidelines in EITF 96-18, the underlying shares of common stock associated with the WorldCom Warrant subject to repurchase were revalued at each balance sheet date to reflect their current fair value until WorldCom's performance commitment was completed. Any resulting increase in fair value of the warrant was recorded to construction in progress. In addition, the following assumptions were used in determining the fair value of the warrant: deemed fair market value per share of $153.60, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 5.5% and a contractual life of 5 years. In June 2000, the agreement with Worldcom was amended (see below).

In November 1999, the Company entered into a master agreement with Bechtel Corporation, or Bechtel, whereby Bechtel agreed to act as the exclusive contractor under a Master Agreement to provide program management, site identification and evaluation, engineering and construction services to build approximately 29 IBX hubs over a four year period under mutually agreed upon guaranteed completion dates. As part of the agreement, the Company granted Bechtel a warrant to purchase 11,016 shares of the Company's common stock at $32.00 per share (the "Bechtel Warrant"). The Bechtel Warrant was immediately exercisable and expires five years from date of grant. The Bechtel Warrant was initially valued at $1,497,000 using the Black-Scholes option-pricing model and was recorded to construction in progress. Under EITF 96-18, the underlying shares of common stock associated with the Bechtel Warrant subject to repurchase were revalued at each balance sheet date to reflect their current fair value until Bechtel's performance commitment is complete. Any resulting increase in fair value of the warrants was recorded to construction in progress. In addition, the following assumptions were used in determining the fair value of the warrant: deemed fair market value per share of $153.60, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 5.5% and a contractual life of 5 years. In January 2000, the Bechtel Warrant was exercised. As of December 31, 2002 and 2001, a total of zero and 6,220 shares were subject to repurchase at the original exercise price, until Bechtel's performance obligations were completed.

In January 2000, the Company entered into an operating lease agreement for its new corporate headquarters facility in Mountain View, California. In connection with the lease agreement, the Company granted the lessor a warrant to purchase up to 1,034 shares of the Company's common stock at $192.00 per share (the "Headquarter Warrant"). The warrant expires 10 years from the date of grant. The warrant was valued at $186,000 using the Black-Scholes option pricing model and will be recorded as additional rent expense over the life of the lease. The following assumptions were used in determining the fair value of the warrant: deemed fair value per share of $209.60, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 6.0% and a contractual life of 10 years.

In April 2000, the Company entered into a definitive agreement with a fiber carrier whereby the fiber carrier agreed to install high-bandwidth local connectivity services to a number of the Company's IBX hubs in exchange for colocation space and related benefits in such IBX hubs. In connection with this agreement, the Company granted the fiber carrier a warrant to purchase up to 16,875 shares of the Company's common stock at $128.00 per share (the "Fiber Warrant"). The warrant was immediately exercisable and expires five years from date of grant. A total of 4,375 shares were immediately vested and the remaining 12,500 shares are subject to repurchase at the original exercise price if certain performance commitments are not completed by a pre-determined date. The fiber carrier is not obligated to install high-bandwidth local connectivity services and, apart

from forfeiting the relevant number of shares and colocation space, will not be penalized for not installing. The warrant was initially valued at $5,372,000 using the Black-Scholes option-pricing model and had been recorded initially to construction in progress until installation was completed. The following assumptions were used in determining the fair value of the warrant: deemed fair market value per share of $378.24, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 6.56% and a contractual life of 5 years. Under the applicable guidelines in EITF 96-18, the underlying shares of common stock associated with these warrants subject to repurchase are revalued at each balance sheet date to reflect their current fair value until the performance commitment is complete. As of December 31, 2002, a total of 1,562 shares remain unearned. As the Company has no plans to construct any additional IBX hubs in the foreseeable future, the value of these unearned shares totaling $5,000 is reflected in other assets on the accompanying balance sheet as of December 31, 2002.

In June 2000, the Company entered into a memorandum of understanding with COLT Telecommunications ("Colt") whereby Colt agreed to install high-bandwidth local connectivity services to a number of the Company's European IBX hubs in exchange for colocation space and related benefits in such IBX hubs. In connection with this agreement, the Company granted Colt a warrant to purchase up to 7,813 shares of the Company's common stock at $170.67 per share (the "Colt Warrant"). The warrant was immediately exercisable and expires five years from the date of grant. The shares are subject to repurchase at the original exercise price if certain performance commitments are not completed by a pre-determined date. Colt is not obligated to install high-bandwidth local connectivity services and, apart from forfeiting the relevant number of shares and colocation space, will not be penalized for not installing. The warrant was initially valued at $2,795,000 using the Black-Scholes option-pricing model and was initially recorded to construction in progress. The following assumptions were used in determining the fair value of the warrants: deemed fair market value per share of $434.56, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 6.23% and a contractual life of 5 years. Under the applicable guidelines in EITF 96-18, the underlying shares of common stock associated with this warrant subject to repurchase are revalued at each balance sheet date to reflect their current fair value until the performance commitment is complete. As of December 31, 2002, the Colt Warrant remains unearned as a result of the Company's revised European services strategy (see Note 13). As a result, the value of these unearned shares totaling $25,000 is now reflected in other assets on the accompanying balance sheet as of December 31, 2002.

In June 2000, the Company entered into a strategic agreement with WorldCom and UUNET, an affiliate of WorldCom (the "UUNET Strategic Agreement"), which amends, supersedes and restates the definitive agreement entered into with WorldCom in November 1999 and the related WorldCom Warrant. Under the UUNET Strategic Agreement, WorldCom agreed to install high-bandwidth local connectivity services and UUNET agreed to provide high-speed data entrance facilities to a number of the Company's IBX hubs in exchange for colocation services and related benefits in such IBX hubs. In connection with this strategic agreement, the Company granted WorldCom Venture Fund a warrant (the "WorldCom Venture Fund Warrant") to purchase up to 20,313 shares of Company's common stock at $170.67 per share and all but 1,172 of the shares under the earlier WorldCom Warrant were immediately vested under the UUNET Strategic Agreement. As of January 31, 2002, all shares under the earlier Worldcom Warrant have been fully earned. The WorldCom Venture Fund Warrant was immediately exercisable and expires five years from the date of grant. The warrant is subject to repurchase at the original exercise price if certain performance commitments are not completed by a pre-determined date. WorldCom and UUNET are not obligated to install high-bandwidth local connectivity services and provide high-speed data entrance facilities, respectively, and, apart from forfeiting the relevant number of shares and colocation space, will not be penalized for not performing. The warrant was initially valued at $7,255,000 using the Black-Scholes option-pricing model and has been recorded initially to construction in progress until installation is complete. The following assumptions were used in determining the fair value of the warrant: deemed fair market value per share of $434.56, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 6.23% and a contractual life of 5 years. Under the applicable guidelines in EITF 96-18, the underlying shares of common stock associated with this warrant subject to repurchase are revalued at each

balance sheet date to reflect their current fair value until the performance commitment is complete. Any resulting increase in fair value of the warrant will ultimately be recorded as a leasehold improvement once construction is completed.

In September 2001, the Company amended and restated the Worldcom Venture Fund Warrant, issued in June 2000, and reduced the total number of shares available to purchase to 9,219 shares of the Company's common stock at $170.56 per share, which had been previously earned. In return for providing services to the New York metropolitan area IBX hub, the Company issued two new warrants to the Worldcom Venture Fund. The first new warrant was to purchase 11,094 shares of the Company's common stock at $0.01 per share, of which 4,688 shares were immediately vested and exercisable (the "Second Worldcom Venture Fund Warrant"). The second new warrant was to purchase 7,656 shares of the Company's common stock at $0.01 per share (the "Third Worldcom Venture Fund Warrant"). All Worldcom Venture Fund warrants expire five years from the date of grant. The Company has accounted for these warrants in accordance with the guidance in EITF 96-18 and EITF Abstracts Topic D-90. The unearned portion of the Second Worldcom Venture Fund Warrant and the Third Worldcom Venture Fund Warrant will be fully earned and exercisable at such time as Worldcom provides services, as defined in the warrant agreements, to the New York metropolitan area IBX hub. The unearned portion of the Second Worldcom Venture Fund Warrant and the Third Worldcom Venture Fund Warrant are subject to a reduction in shares if there are Worldcom-caused delays in providing Worldcom service by the opening date of the New York metropolitan area IBX hub. Consistent with the guidance of EITF 96-18 and EITF Abstracts Topic D-90, these warrants have been treated as unissued for accounting purposes until the future services are received from the fiber carrier. The earned portion of the Second Worldcom Venture Fund Warrant, however, was valued in September 2001 at $56,000 using the Black-Scholes option-pricing model and has been recorded initially to construction in progress until installation is complete. The following assumptions were used in determining the fair value of the earned portion of this warrant: fair market value per share of $12.16, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 6.00% and a contractual life of 5 years.

In January 2002, Worldcom completed their installation of fiber in the Company's New York metropolitan area IBX hub, and the Company valued the unearned portion of the Second Worldcom Venture Fund Warrant and the Third Worldcom Venture Fund Warrant, representing 6,406 and 7,656 shares of the Company's common stock, respectively. The Second Worldcom Venture Fund Warrant and the Third Worldcom Venture Fund Warrant were valued at $1,040,000 using the Black-Scholes option-pricing model and have been recorded to property and equipment as a leasehold improvement. The following assumptions were used in determining the fair value of these warrants: fair market value per share of $2.32, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 4.00% and a contractual life of five years.

In addition, the Company has issued several warrants in connection with its debt facilities and capital lease obligations (see Note 4), the Senior Notes (see Note 5), two European lease terminations (see Note 10) and the Pihana Acquisition (see Note 2). In March 2001, holders of the NorthPoint Warrant, the Comdisco Loan and Security Agreement Warrant, the Comdisco Master Lease Agreement Warrant and the Comdisco Master Lease Agreement Addendum Warrant exercised such warrants pursuant to the cashless "net-exercise" provisions thereof. Upon such exercises, such warrant holders received an aggregate of 32,799 shares of the Company's common stock. In addition, certain holders of Senior Note Warrants exercised their warrants during 2002, 2001 and 2000 resulting in 21,662, 40,096, and 10,552 shares of the Company's common stock being issued, respectively. A total of 33,206 shares underlying these Senior Note Warrants remain outstanding as of December 31, 2002.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company has the following common stock warrants outstanding as of December 31, 2002:

	Underlying shares outstanding	Exercise price
Common stock warrants:		
Amended and Restated Original VLL Warrants	8,438	$ 0.32
VLL Loan Amendment Warrants	32,188	0.32
Senior Note Warrants	33,206	0.21
WorldCom Warrant	21,094	21.33
Headquarter Warrant	1,034	192.00
Fiber Warrant	16,875	128.00
Colt Warrant	7,813	170.67
Worldcom Venture Fund Warrant	9,219	170.56
Second Worldcom Venture Fund Warrant	11,094	0.32
Third Worldcom Venture Fund Warrant	7,656	0.32
Heller Warrant	1,172	128.00
UK Warrant	18,750	0.32
Pihana Shareholder Warrants	133,442	191.81
Other warrant	625	0.32
Other warrant	186	160.00
	302,792	

In addition to the above common stock warrants outstanding as of December 31, 2002, the Company also has several additional warrants issued in connection with the Financing, which are comprised of the Convertible Secured Note Warrant, the Change in Control Warrant and the Cash Trigger Warrants (see Note 7).

9. Income Taxes

No provision for federal income taxes was recorded from inception through December 31, 2002 as the Company incurred net operating losses during the period.

State tax expense is included in general and administrative expenses and aggregated less than $40,000 for each of the years in the three year period ended December 31, 2002.

Based on the available objective evidence, the Company believes it is more likely than not that the net deferred tax assets will not be fully realizable. Accordingly, the Company has provided a full valuation allowance against its net deferred tax assets as of December 31, 2002.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Deferred tax assets (liabilities) as of December 31 consists of the following (in thousands):

	2002	2001
Deferred tax assets:		
Depreciation and amortization	$ (4,246)	$ (2,767)
Reserves	24,505	4,840
Credits	211	120
Capitalized start-up costs	317	5,206
Net operating losses	86,475	74,577
Restructuring charges	11,847	3,023
	119,109	84,998
Deferred tax liability	—	—
	—	—
Gross deferred tax asset	119,109	84,998
Valuation allowance	(119,109)	(84,998)
Net deferred tax asset	$ —	$ —

As of December 31, 2002, the Company has a net operating loss carryforward of approximately $232.7 million for federal and approximately $126.2 million for state tax purposes. If not utilized, these carryforwards will begin to expire beginning in 2010 for federal and 2003 for state tax purposes.

The Company has research credit carryforwards of approximately $156,000 and $83,000 for federal and state income tax purposes, respectively. If not utilized, the federal carryforward will expire in various amounts beginning in 2010. The California credit can be carried forward indefinitely.

The Tax Reform Act of 1986 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. In the event the Company has had a change in ownership, utilization of the carryforwards could be restricted.

10. Commitments and Contingencies

San Jose Ground Lease

In May 2000, the Company entered into a purchase agreement regarding approximately 80 acres of real property in San Jose, California. In June 2000, before closing on this property, the Company assigned its interest in the purchase agreement to a buyer and on the same date, this buyer purchased the property and entered into a 20-year lease with the Company for the property (the “San Jose Ground Lease”). Under the terms of the San Jose Ground Lease, the Company has the option to extend the lease for an additional 60 years, for a total lease term of 80 years. In addition, the Company has the option to purchase the property from the buyer on certain designated dates in the future. In September 2001, the Company amended the San Jose Ground Lease (the “First San Jose Ground Lease Amendment”). Previously, the Company posted a letter of credit in the amount of $10,000,000 and was required to increase the letter of credit by $25,000,000 to an aggregate of $35,000,000 if the Company did not meet certain development and financing milestones. Pursuant to the terms of the First San Jose Ground Lease Amendment, the aggregate obligation was reduced by $10,000,000 to $25,000,000 provided the Company agreed to post an additional letter of credit totaling $15,000,000 prior to September 30, 2001. In addition, the operating lease commitments, for the 12-month period ending September 2002, were reduced by $3,000,000 provided the Company prepaid a full year of lease payments. The benefit of this reduction was amortized to rent expense over

the full term of the lease. The additional letter of credit was funded prior to September 30, 2001 and the rent pre-payment was funded subsequent to September 30, 2001. These letter of credit security deposits were to be reduced on a pro rata basis based on the status of construction activity on this property.

In May 2002, the Company further amended the San Jose Ground Lease to provide the Company the option to reduce its obligation under this lease arrangement by up to approximately one-half (the "Second San Jose Ground Lease Amendment"). Pursuant to the terms of the Second San Jose Ground Lease Amendment, for a one-time fee of $5,000,000, which was recorded as a restructuring charge (see Note 13), the Company had a one-year option, effective July 1, 2002, to elect to exclude from this lease anywhere from 20 to 40 acres of the unimproved real property. In September 2002, the Company exercised the option it had purchased in May 2002 and reduced its obligation under the San Jose Ground Lease by approximately one-half and entered into a further amendment of the San Jose Ground Lease (the "Third San Jose Ground Lease Amendment"), which became effective upon the closing of the Combination (see Note 2) and Financing (see Note 7). Pursuant to the terms of the Third San Jose Ground Lease Amendment, in connection with the exercise of the $5,000,000 option, the landlord was permitted to unconditionally draw down on the $25,000,000 in letters of credit. A portion of these letters of credit, totaling approximately $5,990,000, was recorded as prepaid rent expense representing fair value of the lease costs for the 15-month period from October 1, 2002 to December 31, 2003. The prepaid rent represents the total payments that would have otherwise been paid during this period for the remaining one-half of the lease. The Company plans to amortize this prepaid rent expense ratably over the 15-month period. The remaining balance, approximately $19,010,000, was written off and recorded as a restructuring charge as the Company was unable to recognize any future economic benefit attributed to the remaining balance of the letters of credit (see Note 13).

The Company is currently working with the city of San Jose and county of Santa Clara to prepare this land for future development should additional financing become available for this project. As a result, the Company will be assessed increased property taxes on the remaining approximately 40 acres related to the improvement of this land commencing in 2004.

Operating Lease Terminations and Amendments

In February 2002, the Company entered into a termination agreement for its operating leasehold in Amsterdam, The Netherlands (the "Termination Agreement"). As stipulated in the Termination Agreement, the Company will surrender two previously-posted letters of credit totaling approximately $4,814,000, which the Company had already fully written-off in conjunction with the restructuring charge that the Company recorded during the third quarter of 2001 (see Note 13). The first letter of credit was surrendered in March 2002 and the second letter of credit was surrendered in August 2002. The costs associated with terminating this leasehold were consistent with those that the Company estimated during the third quarter of 2001.

In February 2002, the Company entered into an agreement to surrender for its operating leasehold in London, England that was declared effective in March 2002 (the "Agreement to Surrender"). As stipulated in the Agreement to Surrender, the Company surrendered a previously-posted letter of credit totaling approximately $822,000, which the Company had already fully written-off in conjunction with the restructuring charge that the Company recorded during the third quarter of 2001 (see Note 13) and issued a warrant to purchase 18,750 shares of the Company's common stock at $0.32 per share to the Company's landlord (the "UK Warrant"). The UK Warrant was valued at $702,000 using the Black-Scholes option-pricing model and has been recorded as an offset to accrued restructuring charges (see Note 13). The following assumptions were used in determining the fair value of the earned portion of this warrant: fair market value per share of $37.76, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 4.00% and a contractual life of one year. The costs associated with terminating this leasehold were consistent with those that the Company estimated during the third quarter of 2001.

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In April 2002, the Company entered into an agreement to exit its operating leasehold in Frankfurt, Germany (the "Lease Exit Agreement"). As stipulated in the Lease Exit Agreement, the Company surrendered a previously-posted letter of credit totaling approximately $1,076,000, which the Company had already fully written-off in conjunction with the restructuring charge that the Company recorded during the third quarter of 2001 (see Note 13). As also stipulated in the Lease Exit Agreement, the Company additionally agreed to (1) pay rent through May 2002, (2) pay cash settlement fees totaling approximately $1,845,000 and (3) issued a warrant to purchase 35,938 shares of the Company's common stock at $0.32 per share to the Company's landlord in Frankfurt (the "Frankfurt Warrant"). The Frankfurt Warrant was valued at $725,000 using the Black-Scholes option-pricing model and has been recorded as an offset to accrued restructuring charges. The following assumptions were used in determining the fair value of the earned portion of this warrant: fair market value per share of $20.48, dividend yield of 0%, expected volatility of 80%, risk-free interest rate of 4.00% and a contractual life of one year. In May 2002, this warrant was exercised with cash.

In July 2002, the Company finalized its agreement to exit one of its excess U.S. operating leaseholds in Mountain View, California, adjacent to the Company's headquarters (the "Excess Headquarter Lease Termination"). As stipulated in the Excess Headquarter Lease Termination, the Company agreed to pay rent through July 2002 and to waive any rights to any remaining personal property on the premises beyond a specified date. During the quarter ended June 30, 2002, the Company wrote-off all property and equipment located in this excess office space, primarily leasehold improvements and some furniture and fixtures, totaling $1,552,000. This was included in the restructuring charges recorded during 2002 (see Note 13).

In October 2002, the Company amended the lease for its headquarters in Mountain View, California (the "First Amendment to HQ Lease"). Pursuant to the First Amendment to HQ Lease, the Company was granted the option to terminate the leasehold in exchange for a termination fee of $924,000. The Company paid this fee and exercised this option in October 2002. Provided the Company complies with the terms of the First Amendment to HQ Lease, including the timely payment of its lease obligations for six months, the Company will be permitted to terminate the lease without further penalty and will be entitled to a discharge fee equal to $924,000 at the time the premises are vacated. In March 2003, the Company terminated this lease and moved into new headquarter facilities in Foster City, California (see Note 14).

In October 2002, the Company amended its lease for its Secaucus IBX hub (the "Second Amendment to the Secaucus IBX Lease"). Pursuant to the terms of the Second Amendment to the Secaucus IBX Lease, commencing October 1, 2002 and expiring March 31, 2004, a portion of the base rent otherwise due for the period will be deferred under January 2005. Commencing January 1, 2005, the portion of the base rent deferred, plus interest calculated thereon, will be repaid to the Secaucus landlord in 36 equal payments ending December 1, 2007.

Operating Lease Commitments

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 has negotiated rent expense abatement periods to better match the phased build-out of its centers. The Company accounts for such abatements and increasing base rentals using the straight-line method over the life of the lease. The difference between the straight-line expense and the cash payment is recorded as deferred rent.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Minimum future operating lease payments as of December 31, 2002 are summarized as follows (in thousands):

Year ending:		
2003	$	20,913
2004		23,075
2005		26,134
2006		27,189
2007		28,050
Thereafter		206,840
Total	$	332,201

Total rent expense was approximately $25,193,000, $27,150,000 and $16,157,000 for the years ended December 31, 2002, 2001 and 2000, respectively. Deferred rent included in other liabilities was $13,420,000 and $9,691,000 as of December 31, 2002 and 2001, respectively.

Legal Actions

During the quarter ended September 30, 2001, putative shareholder class action lawsuits were filed against the Company, certain of its officers and directors, and several investment banks that were underwriters of the Company's initial public offering. The suits allege that the underwriter defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. The Company and its officers and directors intend to defend the action vigorously. The Company believes that more than one hundred other companies have been named in nearly identical lawsuits that have been filed by some of the same plaintiffs' law firms. The Company believes it has adequate legal defenses and believes that the ultimate outcome of these actions will not have a material effect on the Company's consolidated financial position, results of operations or cash flows, although there can be no assurance as to the outcome of such litigation. Furthermore, no range of loss can be estimated at this time.

Under the Wells Fargo Loan (see Note 4), the Company was required to maintain a minimum cash balance at all times. As of June 30, 2002, the Company was not in compliance with this requirement. Wells Fargo filed a lawsuit against the company seeking to force the Company to obtain a letter of credit in the full amount of the outstanding balance of the Wells Fargo loan. In February 2003, as part of a settlement agreement with Wells Fargo, the Company made a payment to Wells Fargo of approximately $1.7 million in full satisfaction of all amounts owed to Wells Fargo under this loan agreement. As part of the same agreement, the lawsuit has been dismissed and the loan agreement has been terminated (see Note 14).

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.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Employment Agreements

The Company has agreed to indemnify an officer of the Company for any claims brought by his former employer under an employment and non-compete agreement the officer had with this employer.

In August 2002, the Company entered into severance agreements with certain of its executive officers. Under the terms of the agreements, the officers are entitled to one year's salary, bonus and certain healthcare benefits in the event of an involuntary termination for reasons other than cause.

Employee Benefit Plan

The Company has a 401(k) Plan that allows eligible employees to contribute up to 15% of their compensation, limited to $11,000 in 2002. Employee contributions and earnings thereon vest immediately. Although the Company may make discretionary contributions to the 401(k) Plan, no contributions have ever been made as of December 31, 2002.

Guarantor Arrangements

In November 2002, the FASB issued FIN No. 45 "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, an interpretation of FASB Statements No. 5, 57, and 107 and rescission of FASB Interpretation No. 34 ("FIN 45"). FIN 45 requires that a guarantor recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken by issuing the guarantee. FIN 45 also requires additional disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees it has issued. The accounting requirements for the initial recognition of guarantees are applicable on a prospective basis for guarantees issued or modified after December 31, 2002. The disclosure requirements are effective for all guarantees outstanding, regardless of when they were issued or modified, during the first quarter of fiscal 2003. The adoption of FIN 45 did not have a material effect on the Company's consolidated financial statements. The following is a summary of the agreements that the Company has determined are within the scope of FIN 45.

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

The Company enters into standard indemnification agreements in the ordinary course of business. Pursuant to these agreements, the Company indemnifies, holds harmless, and agrees to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally the Company's business partners or customers, in connection with any U.S. patent, or any copyright or other intellectual property infringement claim by any third party with respect to the Company's services. The term of these indemnification agreements is generally perpetual any time after execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company has never incurred costs to defend lawsuits or settle claims related to these indemnification

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

agreements. As a result, the Company believes the estimated fair value of these agreements is minimal. These indemnification agreements were grandfathered under the provisions of FIN 45 as they were in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded for these agreements as of December 31, 2002.

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

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

Under the terms of the Combination Agreement (see Note 2), the Company is contractually obligated to use commercially reasonable efforts to ensure that at all times from and after the closing of the Combination, until such time as neither STT Communications nor its affiliates hold the Company's capital stock or debt securities (or the capital stock received upon conversion of the debt securities) received by STT Communications in connection with the Combination, that none of the Company's capital stock issued to STT Communications is constituted as "United States real property interests" within the meaning of Section 897(c) of the Internal Revenue Code of 1986. Under Section 897(c) of the Code, the Company's capital stock issued to STT Communications would generally constitute "United States real property interests" at such point in time that the fair market value of the "United States real property interests" owned by the Company equals or exceeds 50% of the sum of the aggregate fair market values of (a) the Company's "United States real property interests," (b) the Company's interests in real property located outside the U.S., and (c) any other assets held by the Company which are used or held for use in the Company's trade or business. The Company refers to this provision in the Combination Agreement as the FIRPTA covenant. Pursuant to the FIRPTA covenant, the Company may be forced to take commercially reasonable proactive steps to ensure the Company's compliance with the FIRPTA covenant, including, but not limited to, (a) a sale-leaseback transaction with respect to all real property interests, or (b) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all of the Company's outstanding stock (this reorganization would require the submission of that transaction to the Company's stockholders for their approval and the consummation of that exchange). Currently, the Company is in compliance with the FIRPTA covenant. This

arrangement was grandfathered under the provisions of FIN 45 as it was in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded related to non-compliance with the FIRPTA covenant as of December 31, 2002.

Under the terms of the Combination Agreement (see Note 2), the Company is contractually obligated to use the Company's reasonable best efforts to obtain the release of STT Communications from a bank guarantee associated with i-STT's unconsolidated Thailand joint venture. Such efforts may include i-STT assuming such guarantee if it is commercially reasonable to do so. Currently, the Company has not assumed such guarantee and accordingly, no liability has been recorded for this potential liability as of December 31, 2002. This guarantee is for a Thai baht 260,000,000 bank loan (approximately $6,032,000 as translated using effective exchange rates at December 31, 2002), of which Thai baht 54,900,000 is currently outstanding as of December 31, 2002 (approximately $1,274,000 as translated using effective exchange rates at December 31, 2002). This arrangement was grandfathered under the provisions of FIN 45 as it was in effect prior to December 31, 2002. Accordingly, the Company has no liabilities recorded related to this matter as of December 31, 2002.

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

11. Related Party Transactions

Officer Loans

Through December 31, 2000, the Company advanced an aggregate of $1,150,000 to three officers of the Company. During 2001, the Company advanced an additional $2,412,000 to two officers of the Company, including a loan to the Company's chief executive officer totaling $1,512,000. All such officer loans were evidenced by promissory notes. The proceeds of these loans were used to fund the purchase of personal residences. The loans were due at various dates through 2006, but were subject to certain events of acceleration and were secured by a second deed of trust on the officers' residences. The loans were non-interest bearing. In October 2001, one of these loans totaling $150,000 was repaid in full in conjunction with an officer leaving the Company.

In January 2002, the Board of Directors forgave $874,000 of the chief executive officer's employee loan totaling $1,512,000 in exchange for the chief executive officer waiving his right to any bonuses earned and expensed in 2001. The remaining amount due under the loan of $638,000 was repaid to the Company in full in February 2002. Furthermore, the Company negotiated with two other executive officers of the Company to repay their loans in full totaling $1,000,000. In exchange, the Company agreed to pay a portion of the interest on the officer's mortgage for their principal residence for a 24-month period. One of these loans totaling $750,000 was repaid in full in February 2002 and the second loan totaling $250,000 was repaid in full in March 2002.

In September 2002, the Company negotiated with a non-executive officer of the Company for early repayment of the last remaining officer loan totaling $900,000. A portion of the loan was forgiven to compensate the employee for related out-of-pocket costs of sale of the residence. The remaining amount, totaling $700,000, due under the loan was repaid to the Company in October 2002.

No other officer or employee loans exist as of December 31, 2002. These loans were presented in other assets on the accompanying consolidated balance sheet as of December 31, 2001.

Revenue Transactions

In February and March 2002, the Company entered into two agreements to resell equipment with related party companies. Both related party companies have executive officers that serve on the Company's Board of Directors, and one of the related party company executive officers also serves on the board of directors of such company. In addition, one of the companies was also a 5% or greater stockholder in the Company. Revenue recognized during 2002 from such equipment reseller agreements totaled approximately $2,936,000.

For the year ended December 31, 2001, Loudcloud, Inc. ("Loudcloud") was the Company's second largest customer. Revenues from Loudcloud amounted to $5,105,000, which represented 8% of the Company's total revenues for fiscal 2001. Andrew S. Rachleff, one of the Company's directors, is a co-founder and general partner of Benchmark Capital. Benchmark Capital is a greater than 5% stockholder of Loudcloud, and Mr. Rachleff currently serves on the Board of Directors of Loudcloud. Subsequent to December 31, 2001, Loudcloud changed its name to Opsware, Inc. and sold its Equinix-related operations to Electronic Data Systems ("EDS"). As a result, Equinix now contracts its services to EDS.

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. Accordingly, the Company considers itself to operate in a single segment for purposes of disclosure under SFAS No. 131. The Company's chief operating decision-maker evaluates performance, makes operating decisions and allocates resources based on financial data consistent with the presentation in the accompanying consolidated financial statements.

Due to the Combination (see Note 2), the Company acquired operations in Asia-Pacific effective December 31, 2002. As a result, the Company's consolidated balance sheet as of December 31, 2002 includes certain net identifiable assets based in Asia-Pacific. In addition, commencing in fiscal 2003, the Company's consolidated statement of operations will include revenues and operating expenses from Asia-Pacific. The Company expects that in fiscal 2003, Asia-Pacific revenues will comprise approximately 15% of the Company's total consolidated revenues.

During the quarter ended September 30, 2001, the Company recorded a restructuring charge as part of its revised European services strategy. A total of $45,315,000 of the restructuring charge related to the write-off of certain European assets to their net realizable value (see Note 13). As of December 31, 2002, all of the Company's operations and assets were based in the United States with the exception of $9,840,000 of the Company's net identifiable assets based in Asia-Pacific, $681,000 of the Company's net identifiable assets based in Europe and $605,000 of the Company's total net loss was attributable to additional restructuring and other activity in Europe for the year ended December 31, 2002. As of December 31, 2001, all of the Company's operations and assets were based in the United States with the exception of $2,234,000 of the Company's net identifiable assets based in Europe and $51,515,000 of the Company's total net loss was attributable to the development and restructuring of its European operations for the year ended December 31, 2001. As of December 31, 2000, all of the Company's operations and assets were based in the United States with the exception of $24,459,000 of the Company's identifiable assets based in Europe and $429,000 of the Company's total net loss was attributable to the development of its European operations.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

13. Restructuring Charges

2001 Restructuring Charge

During the quarter ended September 30, 2001, the Company revised its European services strategy through the development of new partnerships with other leading international Internet exchange partners rather than build and operate its own European IBX hubs. In addition, the Company initiated efforts to exit certain leaseholds relating to certain excess U.S. operating leases. Also, in September 2001, the Company implemented an approximate 15% reduction in workforce, primarily in headquarter positions, in an effort to reduce operating costs, which resulted in approximately $5.6 million in annual savings. As a result, the Company took a total restructuring charge of $48,565,000 primarily related to the write-down of European construction in progress assets to their net realizable value, the write-off of several European letters of credit related to various European operating leases, the accrual of estimated European and U.S. leasehold exit costs and the severance accrual related to the reduction in workforce. The remaining European assets as of December 31, 2001, totaling $2,234,000, represented assets purchased during pre-construction activities that were held for resale and sold during 2002 (see Note 3). As of December 31, 2001, the Company had successfully surrendered one of the European leases. The Company completed the exit of the remaining European leases and one of the U.S. leases during 2002 (see Note 10). The collective costs of these European exit activities, primarily the exit of the German leasehold and an additional loss incurred on the sale of the European assets held for resale, exceeded the amount estimated by management during the third quarter of 2001. As a result, the Company recorded an additional restructuring charge during the second quarter of 2002 (see 2002 Restructuring Charges below). The reduction in workforce was substantially completed during the fourth quarter of 2001.

A summary of the movement in the 2001 restructuring charge accrual for the year ended December 31, 2002 is outlined as follows (in thousands):

	Accrued restructuring charge as of December 31, 2001	Non-cash charges	Cash payments	Accrued restructuring charge as of December 31, 2002
European exit costs	$ 4,606	(2,492)	(2,114)	$ —
U.S. lease exit costs	1,512	—	(702)	810
Workforce reduction	272	—	(272)	—
	$ 6,390	$ (2,492)	$ (3,088)	$ 810

A summary of the 2001 restructuring charge through December 31, 2001 is outlined as follows (in thousands):

	Total 2001 restructuring charge	Non-cash charges	Cash payments	Accrued restructuring charge as of December 31, 2001
Write-down of European construction in progress	$ 29,260	$ (29,260)	$ —	$ —
Write-off of European letters of credit	8,634	(8,634)	—	—
European exit costs	7,421	(2,059)	(756)	4,606
U.S. lease exit costs	2,000	—	(488)	1,512
Workforce reduction	1,250	(134)	(844)	272
	$ 48,565	$ (40,087)	$ (2,088)	$ 6,390

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2002 Restructuring Charges

During the quarter ended June 30, 2002, the Company took a second restructuring charge to reflect the Company's ongoing efforts to exit or amend several unnecessary U.S. IBX expansion and headquarter office space operating leaseholds and to complete the Company's European exit activities. In addition, in May 2002, the Company implemented a reduction in workforce of less than 10%, primarily in headquarter positions, in an effort to reduce operating costs. As a result, the Company took a total restructuring charge of $9,950,000, primarily related to the Second San Jose Ground Lease option fee of $5,000,000 (see Note 10); the write-off of property and equipment, primarily leasehold improvements and some equipment, located in two unnecessary U.S. IBX expansion and headquarter office space operating leaseholds that the Company decided to exit and that do not currently provide any ongoing benefit; the write-off of two U.S. letters of credit related to one U.S. operating leasehold from which the Company has committed to exit; an accrual for the remaining estimated European exit costs and additional U.S. leasehold exit costs and the severance accrual related to the reduction in workforce. The Company continues to work on an exit plan for the excess U.S. operating leases and expects to complete the exit of the U.S. operating leases within the next twelve months. Should it take longer to negotiate the exit of the remaining U.S. leases or the lease settlement amounts exceed the amounts estimated by management, the actual U.S. lease exit costs could exceed the amount estimated and additional restructuring charges may be required. The reduction in workforce was substantially completed during the second quarter of 2002.

During the quarter ended September 30, 2002, the Company recorded an additional restructuring charge as a result of the Third San Jose Ground Lease Amendment (see Note 10). As a result, the Company released its letters of credit relating to the San Jose Ground Lease and recorded a restructuring charge of $19,010,000.

During the fourth quarter ended December 31, 2002, the Company recorded an additional restructuring charge as a result of a small reduction in workforce in headquarter positions offset by the reversal of the previous write-down of one of the letters of credit recorded in conjunction with the second quarter 2002 restructuring charge noted above. Based on further negotiation with the landlord, both parties agreed that the letter of credit will be left intact. The reduction in workforce was substantially completed in January 2003.

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

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

A summary of the 2002 restructuring charges through December 31, 2002 is outlined as follows (in thousands):

	Total 2002 restructuring charges	Non-cash charges	Cash payments	Accrued restructuring charge as of December 31, 2002
San Jose ground lease option fee	$ 5,000	$ —	$ (5,000)	$ —
Write-off of U.S. property and equipment	2,585	(2,585)	—	—
Additional lease exit costs	1,115	—	(723)	392
Write-off of two U.S. letters of credit	750	(750)	—	—
Workforce reduction	500	—	(469)	31
Second quarter subtotal	9,950	(3,335)	(6,192)	423
Write-off of San Jose ground lease letters of credit	19,010	(19,010)	—	—
Third quarter subtotal	19,010	(19,010)	—	—
Workforce reduction	425	—	—	425
Write-up of one U.S. letter of credit	(500)	500	—	—
Fourth quarter subtotal	(75)	500	—	425
	$ 28,885	$(21,845)	$(6,192)	$ 848

Acquired Restructuring Charges

As a result of the Combination (see Note 2), the Company acquired several accruals related to restructuring activities from both i-STT and Pihana, which were commenced in 2002, but will not be completed until 2003. A summary of these acquired restructuring accruals as of December 31, 2002 is outlined as follows (in thousands):

Workforce reduction and relocation	$ 5,712
Lease exit and office shutdown costs	1,735
Other professional fees	2,423
	$ 9,870

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

14. Subsequent Events

On January 1, 2003, pursuant to the provisions of the Company's stock plans (see Note 8), the number of common shares in reserve automatically increased by 506,921 shares for the 2000 Equity Incentive Plan, 168,974 shares for the Employee Stock Purchase Plan and 50,000 shares for the 2000 Director Stock Option Plan.

In January 2003, the Company entered into a settlement agreement with Wells Fargo in connection with a lawsuit related to the Wells Fargo Loan (the "Wells Fargo Settlement") (see Notes 4 and 10). In compliance with the terms of the Wells Fargo Settlement, in February 2003, the Company paid Wells Fargo $1,703,000 in full satisfaction of all amounts owed to Wells Fargo, including $1,631,000 in principal. As part of the Wells Fargo Settlement, the lawsuit has been dismissed and the Wells Fargo Loan terminated.

EQUINIX, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In February 2003, the Company entered into a new corporate headquarter lease in Foster City, California, which commenced March 2003 and ends in March 2008. In March 2003, the Company terminated its Mountain View, California, corporate headquarter lease (see Note 10) and moved its corporate headquarters to the new office facility in Foster City.

In March 2003, the Board of Directors granted options to all employees as part of an annual grant to all employees, including all officers of the Company, to purchase 2,663,600 shares of common stock at a weighted average exercise price of $3.25 per share under the Plans (see Note 8).

EQUINIX, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
QUARTERLY FINANCIAL INFORMATION (Unaudited)

The Company believes that period-to-period comparisons of its financial results should not be relied upon as an indication of future performance. The Company's revenues and results of operations have been subject to significant fluctuations, particularly on a quarterly basis, and the Company's revenues and results of operations could fluctuate significantly quarter-to-quarter and year-to-year. Significant quarterly fluctuations in revenues will cause significant fluctuations in our cash flows and the cash and cash equivalents and accounts receivable accounts on the Company's balance sheet. Causes of such fluctuations may include the volume and timing of new orders and renewals, the sales cycle for our services, the introduction of new services, changes in service prices and pricing models, trends in the Internet infrastructure industry, general economic conditions (such as the recent economic slowdown), extraordinary events such as acquisitions or litigation and the occurrence of unexpected events.

The unaudited quarterly financial information presented below has been prepared by the Company and reflects all adjustments, consisting only of normal recurring adjustments, which in the opinion of management are necessary to present fairly the financial position and results of operations for the interim periods presented.

The following table presents selected quarterly information for fiscal 2002, 2001 and 2000:

	First quarter	Second quarter	Third quarter	Fourth quarter
	(in thousands, except per share data)			
2002:				
Revenues	$ 20,158	$ 18,040	$ 20,187	$ 18,803
Net income (loss)	(13,694)	(24,557)	(44,088)	60,721
Basic net income (loss) per share	(5.16)	(7.94)	(14.04)	19.14
Diluted net income (loss) per share	(5.16)	(7.94)	(14.04)	18.12
2001:				
Revenues	$ 12,613	$ 16,157	$ 17,178	$ 17,466
Net loss	(41,537)	(37,857)	(81,574)	(27,447)
Basic and diluted net loss per share	(17.40)	(15.52)	(33.01)	(10.90)
2000:				
Revenues	$ 136	$ 892	$ 3,933	$ 8,055
Net loss	(18,009)	(26,811)	(32,085)	(42,885)
Basic and diluted net loss per share	(73.21)	(92.13)	(22.72)	(18.27)

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INDEX TO EXHIBITS

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

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

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

Exhibit Number	Description of Document
10.64	Tenancy Agreement over units #05-01, #05-02, #05-03 and #05-04 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.65	Tenancy Agreement over units #03-05, #03-06, #03-07 and #03-08 of Block 20 Ayer Rajah Crescent, Singapore 139964.
10.66	Lease Agreement with Nation Multimedia Group Public Co., Ltd. For 1st and 3rd Floor of Nation Building II, Bangkok, dated as of February 1, 2001.
10.67	Lease Agreement with Nation Multimedia Group Public Co., Ltd. For 6th Floor of Nation Tower, Bangkok, dated as of October 1, 2001.
10.68	General Factory Lease Agreement dated February 21, 2001.
10.69	Lease Agreement with Downtown Properties, LLC dated April 10, 2000, as amended.
10.70	Lease Agreement with Comfort Development Limited dated November 10, 2000.
10.71	Lease Agreement with PacEast Telecom Corporation dated June 15, 2000, as amended.
10.72	Lease Agreement Lend Lease Real Estate Investments Limited dated October 20, 2000.
10.73	Lease Agreement with AIPA Properties, LLC dated November 1, 1999, as amended.
10.74	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.
10.75	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.
10.76	Securities Purchase Agreement by and among Equinix, the Guarantors and the Purchasers, dated as of October 2, 2002.
10.77	Series A-1 Convertible Secured Note Due 2007 issued to i-STT Investments Pte Ltd on December 31, 2002.
10.78	Preferred Stock Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.79	Change in Control Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.80	Series A Cash Trigger Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.81	Series B Cash Trigger Warrant issued to i-STT Investments Pte Ltd on December 31, 2002.
10.82	First Supplemental Indenture between Equinix and State Street Bank and Trust Company of California, N.A., as Trustee, dated as of December 28, 2002.
16.1*	Letter regarding change in certifying accountant.
21.1	Subsidiaries of Equinix.
23.1	Consent of PricewaterhouseCoopers LLP, Independent Accountants.
99.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
99.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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

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

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

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

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

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

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

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

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

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

+ 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.

Exhibit 3.2

AMENDED AND RESTATED

BYLAWS OF

EQUINIX, INC.

A DELAWARE CORPORATION

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ARTICLE I

OFFICES AND RECORDS

Section 1.1 Delaware Office. The registered office of the Corporation in the State of Delaware shall be located in the City of Wilmington, County of New Castle.

Section 1.2 Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the board of directors of the Corporation (the "Board of Directors") may designate or as the business of the Corporation may from time to time require.

Section 1.3 Books and Records. The books and records of the Corporation may be kept at the Corporation's principal offices or at such other locations outside the State of Delaware as may from time to time be designated by the Board of Directors.

ARTICLE II

STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of the stockholders of the Corporation shall be held at such date, place and/or time as may be fixed by resolution of the Board of Directors.

Section 2.2 Special Meeting. Special meetings of stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of these Amended and Restated Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

Section 2.3 Place of Meeting. The Board of Directors may designate the place of meeting for any meeting of the stockholders. If no designation is made by the Board of Directors, the place of meeting shall be the principal office of the Corporation.

Section 2.4 Notice of Meeting. Except as otherwise required by law, written or printed notice or notice otherwise allowed by Delaware General Corporation Law, stating the place, day and hour of the meeting and the purposes for which the meeting is called, shall be prepared and delivered by the Corporation not less than ten days nor more than sixty days before the date of the meeting, either personally, or by mail, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his, her or its address as it appears on the stock transfer books of the Corporation. Such further notice shall be given as may be required by law. Meetings may be held without notice if all stockholders entitled to vote are present (except as otherwise provided by law), or if notice is waived by those not present. Any previously scheduled meeting of the stockholders may be postponed and (unless the Corporation's certificate of incorporation (as in effect from time to time, including any certificates of designation, the "Certificate of Incorporation") otherwise provides) any

special meeting of the stockholders may be cancelled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 2.5 Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series voting separately as a class or series, the holders of a majority of the voting power of the shares of such class or series shall constitute a quorum for the transaction of such business. The chairman of the meeting or a majority of the shares of Voting Stock so represented may adjourn the meeting from time to time, whether or not there is such a quorum (or, in the case of specified business to be voted on by a class or series, the chairman or a majority of the shares of such class or series so represented may adjourn the meeting with respect to such specified business). No notice of the time and place of adjourned meetings need be given except as required by law. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.6 Proxies. At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or as may be permitted by law, or by his, her or its duly authorized attorney-in-fact. Such proxy must be filed with the Secretary of the Corporation or his representative at or before the time of the meeting.

Section 2.7 Notice of Stockholder Business and Nominations.

A. Subject to Article VII, nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (1) pursuant to the Corporation's notice with respect to such meeting, (2) by or at the direction of the Board of Directors or (3) by any stockholder of record of the Corporation who was a stockholder of record at the time of the giving of the notice provided for in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this Section 2.7.

B. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to paragraph (A)(3) of this Section 2.7, (1) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and (2) such business must be a proper matter for stockholder action under the Delaware General Corporation Law. To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not less than 45 or more than 75 days prior to the first anniversary (the "Anniversary") of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that if no proxy materials were mailed by the Corporation in connection with the preceding year's annual meeting, or if the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of (x) the 90th day prior to such annual meeting or (y) the 10th day following the day on which public announcement of the date of such

meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such person's written consent to serve as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner.

C. Notwithstanding anything in the second sentence of paragraph (B) of this Section 2.7 to the contrary, if the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least 55 days prior to the Anniversary, a stockholder's notice required by this Section 2.7 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

D. Subject to Article VII, only persons nominated in accordance with the procedures set forth in this Section 2.7 shall be eligible to serve as directors and only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.7. The chair of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Amended and Restated Bylaws and, if any proposed nomination or business is not in compliance with these Amended and Restated Bylaws, to declare that such defective proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

E. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Subject to Article VII, nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or (2) by any stockholder of record of the Corporation who is a stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.7. Subject to Article VII, nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice required by paragraph (B) of this Section 2.7 shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the later of

the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

F. For purposes of this Section 2.7, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

G. Notwithstanding the foregoing provisions of this Section 2.7, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 2.7. Nothing in this Section 2.7 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.8 Procedure for Election of Directors. Election of directors at all meetings of the stockholders at which directors are to be elected shall be by written ballot or other means allowed by Delaware General Corporation Law, and, except as otherwise set forth in the Certificate of Incorporation with respect to the right of the holders of any series of preferred stock of the Corporation (the "Preferred Stock") or any other series or class of stock to elect additional directors under specified circumstances, a plurality of the votes cast thereat shall elect directors. Except as otherwise provided by law, the Certificate of Incorporation or these Amended and Restated Bylaws, all matters other than the election of directors submitted to the stockholders at any meeting shall be decided by the affirmative vote of a majority of the voting power of the outstanding Voting Stock present in person or represented by proxy at the meeting and entitled to vote thereon.

Section 2.9 Inspectors of Elections; Opening and Closing the Polls.

A. The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act, at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by the Delaware General Corporation Law.

B. The chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.10 Consent of Stockholders in Lieu of Meeting. Except as provided in the Certificate of Incorporation, any action required or permitted to be taken by the

stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by the Certificate of Incorporation or by these Amended and Restated Bylaws, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 3.2 Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances and Article VII, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board.

Section 3.3 Regular Meetings. A regular meeting of the Board of Directors shall be held without notice other than this Bylaw immediately after, and at the same place as, each annual meeting of stockholders. The Board of Directors may, by resolution, provide the time and place for the holding of additional regular meetings without notice other than such resolution. Until December 31, 2003, the Board of Directors shall meet at least monthly.

Section 3.4 Special Meetings. Special meetings of the Board of Directors shall be called at the request of the Chairman of the Board, the President or a majority of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of the meetings.

Section 3.5 Notice. Notice of any special meeting shall be given to each director at his business or residence in writing or by telegram, facsimile transmission or telephone communication. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by facsimile transmission, such notice shall be transmitted at least twenty-four hours before such meeting. If by telephone, the notice shall be given at least twelve hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Amended and Restated Bylaws as provided under Section 8.1. A meeting may be held at any time without notice if all the directors are present (except as otherwise provided by law) or if those not present waive notice of the meeting in writing, either before or after such meeting.

Section 3.6 Conference Telephone Meetings. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 3.7 Quorum. A whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.8 Vacancies. Subject to Article VII and the rights of holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise provided by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.9 Committees.

A. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

B. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to these Amended and Restated Bylaws.

Section 3.10 Removal. Subject to Article VII and the rights of the holders of any series of Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of

the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE IV

OFFICERS

Section 4.1 Elected Officers. The elected officers of the Corporation shall be a Secretary and a Treasurer, and may be a Chairman of the Board, a President and a Chief Executive Officer, and such other officers as the Board of Directors from time to time may deem proper. The Chairman of the Board, if any, shall be chosen from the directors. All officers shall be chosen by the Board of Directors and shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of Articles II, III, IV and V. Such officers shall also have powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof.

Section 4.2 Election and Term of Office. The elected officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Subject to Section 4.7 of these Amended and Restated Bylaws, each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign.

Section 4.3 Chairman of the Board. The Chairman of the Board, if any, shall preside at all meetings of the Board. In the absence of the Chairman of the Board at any meeting, a majority of the directors present at such meeting shall have the power to select any director at the meeting to preside.

Section 4.4 President and Chief Executive Officer. The Chief Executive Officer, or if there is no Chief Executive Officer, the President, shall be the general manager of the Corporation, subject to the control of the Board of Directors, and as such shall preside at all meetings of stockholders, shall have general supervision of the affairs of the Corporation, shall sign or countersign or authorize another officer to sign all certificates, contracts, and other instruments of the Corporation as authorized by the Board of Directors, shall make reports to the Board of Directors and stockholders, and shall perform all such other duties as are incident to such office or are properly required by the Board of Directors. If the Board of Directors creates the office of the President as a separate office from the Chief Executive Officer, the President shall have such duties as are determined by, and shall be subject to the general supervision, direction, and control of, the Chief Executive Officer unless the Board of Directors provides otherwise.

Section 4.5 Secretary. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and directors and all other notices required by law or by these Amended and Restated Bylaws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman of the Board, the

Chief Executive Officer or the President, or by the Board of Directors, upon whose request the meeting is called as provided in these Amended and Restated Bylaws. He or she shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him or her by the Board of Directors (to the extent consistent with the Chairman's duty and authority to preside at all meetings of the Board of Directors), the Chief Executive Officer or the President. He or she shall have custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President, and attest to the same.

Section 4.6 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate receipts and disbursements in books belonging to the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositaries as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, the Chief Executive Officer or the President, taking proper vouchers for such disbursements. The Treasurer shall render to the Chairman of the Board, the President, the Chief Executive Officer and the Board of Directors, whenever requested, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe.

Section 4.7 Removal. Any officer elected by the Board of Directors may be removed by the Board of Directors whenever, in their judgment, the best interests of the Corporation would be served thereby. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or an employee plan.

Section 4.8 Vacancies. A newly created office and a vacancy in any office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term.

ARTICLE V

STOCK CERTIFICATES AND TRANSFERS

Section 5.1 Stock Certificates and Transfers.

A. The interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe. The shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his, her or its attorney, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, and

with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require.

B. The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

ARTICLE VI

INDEMNIFICATION

Section 6.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 6.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 6.2 Right to Advancement of Expenses. The right to indemnification conferred in Section 6.1 shall include, to the extent permitted by law, the right to be paid by the Corporation the expenses incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial

decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

Section 6.3 Right of Indemnitee to Bring Suit. The rights to indemnification and to the advancement of expenses conferred in Section 6.1 and Section 6.2, respectively, shall be contract rights. If a claim under Section 6.1 or Section 6.2 is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (A) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (B) in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation, these Amended and Restated Bylaws, or any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any indemnitee or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6.6 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant

rights to indemnification, and to the advancement of expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE VII

GOVERNANCE PROVISIONS

Section 7.1 Number of Directors. Notwithstanding Section 3.2, until this Article VII terminates in accordance with Section 7.6, the number of directors of this Corporation shall be fixed at nine.

Section 7.2 Nomination of Directors. At each annual meeting of the stockholders, or at any meeting of the stockholders at which members of the Board of Directors are to be elected, the nominees to the Board of Directors shall be determined as follows:

A. Series A Directors.

(1) Each Series A Director (as defined in Section 7 of the Corporation's certificate of designation filed with the Secretary of the State of Delaware on December 30, 2002 (the "Certificate of Designation")) shall be nominated by holders of a majority of the shares of Series A Preferred Stock outstanding.

(2) If at any time the number of Series A Directors is reduced by operation of Section 7 of the Certificate of Designation, nominations for the director seats affected by such reduction shall thereafter be made in accordance with Section 7.2(D) of these Amended and Restated Bylaws.

B. Pihana Director.

(1) Until the earlier of (the "Pihana Board Termination Date") (i) this Corporation's first annual meeting of stockholders after December 31, 2002, provided such meeting does not occur prior to May 30, 2003, and (ii) the sale by this Corporation of convertible debt securities in aggregate principal amount of at least $10 million, one director (the "Pihana Director") shall be nominated by holders of a majority of the Corporation's voting stock held by the Pihana Stockholders (as defined in that certain Governance Agreement between the Corporation, STT Communications Ltd. and the former stockholders of Pihana Pacific, Inc. dated December 31, 2002 (the "Governance Agreement")) as of the record date for any election of directors; provided, however, that any Pihana Director shall be reasonably acceptable to a majority of the the Series A Directors, the Equinix Directors (as defined below) and the Independent Directors (as defined below), taken as a whole.

(2) At such time as the Pihana Stockholders are no longer eligible to nominate a Pihana Director pursuant to Section 7.2(B)(1), nominations for the director seat affected by such reduction shall be made in accordance with Section 7.2(D) of these Amended and Restated Bylaws.

(3) Notwithstanding Section 7.2(B)(2), Section 9.1 or any other provision in these Bylaws to the contrary, after the Pihana Board Termination Date the Board of Directors may amend this Section 7.2(B) to provide an alternative nomination process to fill the seat vacated by the Pihana Director; provided, however, that any such action by the Board of Directors shall include the vote of at least one non-independent Series A Director, one non-independent Equinix Director and one Remaining Director. For purposes of this Section 7.2(B)(3) whether or not a director is independent shall be determined based on the definition of "independent" provided in Section 7.2(C)(3).

C. Equinix Directors. So long as any Series A Directors may be nominated pursuant to Section 7.2(A), the stockholders of the Corporation shall be represented by three directors (the "Equinix Directors") who shall be nominated as follows:

(1) The initial Equinix Directors shall be the Original Equinix Directors (as defined in the Governance Agreement) until their resignation or removal.

(2) Any vacancies among the Equinix Directors shall be filled based on the nomination of the remaining Original Equinix Directors or any successor directors nominated by Original Equinix Directors or properly nominated successors of Original Equinix Directors; provided, however, if no Original Equinix Directors or successors of Original Equinix Directors are then on the Board of Directors, the Equinix Directors shall be Independent Directors (as defined below) selected for nomination by Parent's nominating committee.

(3) One Equinix Director nominated pursuant to Section 7.2(C)(1) or (2) shall at all times be "independent" within the meaning of the then-applicable rules and regulations of The Nasdaq National Market or any stock exchange or trading system ("Trading Rules") on which the Corporation's Common Stock may then trade (an "Independent Director"), and the nomination of such independent Equinix Director shall be subject to reasonable approval by nomination by Parent's nominating committee.

D. Remaining Directors. All other directors (the "Remaining Directors") shall be Independent Directors selected for nomination by Parent's nominating committee.

E. Removal of Directors. Stockholders and other persons having the right to designate a Series A Director or Pihana Director pursuant to this Section 7.2 may remove the director or directors so designated by providing written notice to the Corporation at any time and from time to time, and may do so with or without cause, in their sole discretion. Equinix Directors may only be removed by this Corporation's stockholders for cause.

F. Appointment of Directors. In the event of the resignation, death, removal or disqualification of an Equinix Director, Series A Director or Pihana Director, the stockholders or directors having the right to nominate that director pursuant to this Section 7.2 may nominate a new director to fill the vacancy so created, and, after written notice of such nomination has been given by such stockholders to Parent, the Board shall appoint such nominee to fill such vacancy or, if necessary, shall nominate such nominee for election to the Board.

Section 7.3 Board Committees.

A. To the extent permitted under applicable Trading Rules, each committee of the Board of Directors shall have at least one Series A Director and one Equinix Director. There shall at all times be an equal number of Series A Directors and Equinix Directors on each committee.

B. Subject to applicable Trading Rules, so long as at least two Series A Directors may be nominated pursuant to Section 7.2(A), a Series A Director shall be the Chairman of the Compensation Committee with the powers, if any, delegated by the Board of Directors to such Chairman in the Compensation Committee charter.

C. The Corporation shall at all times have an audit committee, compensation committee and a nominating committee. Each such committee shall be constituted and operated pursuant to applicable Trading Rules.

Section 7.4 Chairman of the Board. Subject to applicable Trading Rules, so long as at least two Series A Directors may be nominated pursuant to Section 7.2(a), the Chairman of the Board shall be a Series A Director.

Section 7.5 Budgets. Each annual, and, if applicable, quarterly, budget shall be approved by the Board of Directors, which approval shall include the vote of at least one non-independent Series A Director, one non-independent Equinix Director and one Remaining Director. For purposes of this Section 7.2(B)(3), whether or not a director is independent shall be determined based on the definition of "independent" provided in Section 7.2(C)(3).

Section 7.6 Termination of Governance Provisions. The provisions of this Article VII shall terminate on the earliest of (i) such time as the holders of shares of Series A Preferred Stock are no longer eligible to nominate a Series A Director pursuant to Section 7.2, (ii) upon the occurrence of a Voting Stock Trigger Event (as defined in the Series A Convertible Preferred Stock and Series A-1 Convertible Preferred Stock Certificate of Designation to the Corporation's Amended and Restated Certificate of Incorporation) and (iii) December 31, 2004.

MISCELLANEOUS PROVISIONS

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

Section 8.2 Dividends. The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and the Certificate of Incorporation.

Section 8.3 Seal. The corporate seal shall have inscribed the name of the Corporation thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 8.4 Waiver of Notice. Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the Delaware General Corporation Law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders of the Board of Directors need be specified in any waiver of notice of such meeting.

Section 8.5 Audits. The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, and it shall be the duty of the Board of Directors to cause such audit to be made annually.

Section 8.6 Resignations. Any director or any officer, whether elected or appointed, may resign at any time by serving written notice of such resignation on the Chairman of the Board, the President, the Chief Executive Officer or the Secretary, and such resignation shall be deemed to be effective as of the close of business on the date said notice is received by the Chairman of the Board, the President, the Chief Executive Officer or the Secretary or at such later date as is stated therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

Section 8.7 Contracts. Except as otherwise required by law, the Certificate of Incorporation, these Amended and Restated Bylaws and any signing authority policies adopted by the Board of Directors from time to time, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the President, the Chief Executive Officer or any Vice President may execute bonds, contracts, deeds, leases and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors, the Chairman of the Board, the President, the Chief Executive Officer or any Vice President of the Corporation may delegate contractual powers to others under his jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 8.8 Proxies. The Board of Directors may by resolution from time to time appoint any attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock and other securities of such other corporation or other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE IX

AMENDMENTS

Section 9.1 Amendments. Subject to the provisions of the Certificate of Incorporation and these Amended and Restated Bylaws, these Amended and Restated Bylaws may be amended, altered, added to, rescinded or repealed at any meeting of the Board of Directors or by the affirmative vote of the holders of at least seventy-five percent (75%) of the Corporation's outstanding voting stock (on an as-converted to Common Stock basis), provided notice of the proposed change was given in the notice of the meeting and, in the case of a meeting of the Board of Directors, in a notice given no less than twenty-four hours prior to the meeting; provided, however, that, except as provided in Section 7.2(B), until Article VII terminates pursuant to Section 7.6 of these Amended and Restated Bylaws, Article VII (including references thereto throughout these Amended and Restated Bylaws) and this Section 9.1 may not be amended by the Board of Directors and may only be amended by the affirmative vote of the holders of at least seventy-five percent (75%) of the Corporation's outstanding voting stock (on an as-converted to Common Stock basis).

CERTIFICATE OF SECRETARY OF

EQUINIX, INC.

The undersigned, Renee F. Lanam, hereby certifies that he is the duly elected and acting Secretary of Equinix, Inc, a Delaware corporation (the "Corporation"), and that the Bylaws attached hereto constitute the Bylaws of said Corporation as duly adopted by the Directors on December 30, 2002.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name this 30th day of December, 2002.

/s/ RENEE F. LANAM

Renee F. Lanam
Secretary

Exhibit 10.59

Execution Copy

SECOND AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT

dated as of December 31, 2002

among

EQUINIX OPERATING CO., INC.
as Borrower

and

EQUINIX, INC. AND CERTAIN OF ITS SUBSIDIARIES,
as Guarantors,

VARIOUS LENDERS,

SALOMON SMITH BARNEY INC.,
as Lead Arranger and Book Runner,

and

CITICORP USA, INC.,
as Administrative Agent and Collateral Agent

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SECOND AMENDED AND RESTATED
CREDIT AND GUARANTY AGREEMENT

This **SECOND AMENDED AND RESTATED CREDIT AND GUARANTY AGREEMENT ,** dated as of December 31, 2002, is entered into by and among **EQUINIX OPERATING CO., INC.,** a Delaware corporation, as the Borrower (**"OpCo"**), **EQUINIX, INC.,** a Delaware corporation, as a Guarantor (**"Company"**), and **CERTAIN SUBSIDIARIES OF THE COMPANY**, as Guarantors, the Lenders party hereto from time to time, **SALOMON SMITH BARNEY INC.** (**"SSB"**), as Lead Arranger (in such capacity, the **"Lead Arranger"**), and Book Runner (in such capacity, the **"Book Runner"**), **CITICORP USA INC.** (**"Citicorp"**), as Administrative Agent (together with its permitted successors and assigns in such capacity, **"Administrative Agent"**) and as Collateral Agent (as successor to CIT Lending Services Corporation and together with its permitted successors and assigns in such capacity, **"Collateral Agent"**).

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, OpCo, Company and the Guarantors are party to that certain Amended and Restated Credit Agreement dated as of September 30, 2001 (as amended through the date hereof, the **"Existing Credit Agreement"**) among Goldman Sachs Credit Partners L.P., as joint lead arranger, joint book runner and syndication agent, SSB as joint lead arranger and joint book runner, Citicorp as administrative agent, CIT Lending Services Corporation, as the collateral agent and the lenders party thereto;

WHEREAS, pursuant to the Existing Credit Agreement and the other documents entered into in connection therewith Company secured all of its obligations under the Existing Credit Agreement by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of its assets, including a pledge of all of the Capital Stock of each of its Subsidiaries, other than Purchase Money Loans made to Company which were secured solely by the assets financed with the proceeds of such Loans;

WHEREAS, pursuant to the Existing Credit Agreement and the other documents entered into in connection therewith OpCo has secured all of its obligations under the Existing Credit Agreement by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of its assets, including a pledge of all of the Capital Stock of each of its Subsidiaries and all the Capital Stock of each of its Foreign Subsidiaries;

WHEREAS, pursuant to the Existing Credit Agreement and the other documents entered into in connection therewith Guarantors have guaranteed the obligations of OpCo (and, to the extent not prohibited under the Senior Notes, Company) hereunder and to secure their respective obligations thereunder by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their respective assets, including a pledge of all of the Capital Stock of each of their respective Domestic Subsidiaries and all the Capital Stock of each of their respective Foreign Subsidiaries;

WHEREAS, (i) Company proposes to exchange at least $110,000,000 aggregate principal amount of Senior Notes for Cash and Qualifying Equity as more fully described herein, (ii) Company proposes to issue up to $40,000,000 aggregate principal amount of Convertible Notes, of which at least $30,000,000 will be issued on the Second Amendment Effective Date and (iii) Company proposes to consummate the Recapitalization Transactions pursuant to the terms of the Combination Agreement;

WHEREAS, Company and OpCo have requested that Lenders and Agents make certain amendments to the Existing Credit Agreement to permit the Exchange Offer, the issuance of the Convertible Notes and the Recapitalization Transactions and to make certain revisions to the Existing Credit Agreement in connection therewith;

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities of the parties under the Existing Credit Agreement and that this Agreement amend and restate in its entirety the Existing Credit Agreement and re-evidence the Obligations of OpCo and each other Credit Party outstanding after giving effect to the prepayment of Existing Loans on the Effective Date contemplated hereby; and

WHEREAS, it is the intent of Credit Parties to confirm that all Obligations of Credit Parties under the other Credit Documents, as amended hereby, shall continue in full force and effect and that, from and after the Effective Date, all references to the "Credit Agreement" contained therein shall be deemed to refer to this Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree to amend and restate the Existing Credit Agreement as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"A-1 Notes" means the 14% Series A-1 Convertible Secured Notes due 2007 of Company in an aggregate principal amount of up to $30,000,000 plus any corresponding PIK Notes issued pursuant to the terms and conditions of the Securities Purchase Agreement.

"A-2 Notes" means the 10% Series A-2 Convertible Secured Notes due 2007 of Company in an aggregate principal amount of up to $10,000,000 plus any corresponding PIK Notes issued pursuant to the terms and conditions of the Securities Purchase Agreement.

"Adjusted Eurodollar Rate" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by dividing (and rounding upward to the next whole multiple of 1/16 of 1%) (i) (a) the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Administrative Agent to be the offered rate which appears on the page of the Telerate Screen which displays an average British Bankers Association Interest Settlement Rate (such page currently being page

number 3740 or 3750, as applicable) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) does not appear on such page or service or if such page or service shall cease to be available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service which displays an average British Bankers Association Interest Settlement Rate for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum (rounded to the nearest 1/100 of 1%) equal to the offered quotation rate to first class banks in the London interbank market by Administrative Agent for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement.

"Administrative Agent" as defined in the preamble hereto.

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Company or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of Company or any of its Subsidiaries, threatened against or affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries.

"Affected Lender" as defined in Section 2.17(b).

"Affected Loans" as defined in Section 2.17(b).

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Neither any Agent nor any Lender shall be deemed Affiliates of any Credit Party, by virtue of the security interests granted under the Pledge and Security Agreement.

"Agent" means each of the Lead Arranger, Book Runner, Administrative Agent and Collateral Agent.

"Aggregate Amounts Due" as defined in Section 2.16.

"Aggregate Excess Cash" means the aggregate consolidated amount of Cash and Cash Equivalents in excess of $20,000,000 as listed on the consolidated balance sheet of Company and its Subsidiaries as at the end of any Fiscal Quarter.

"Aggregate Payments" as defined in Section 7.2.

"Agreement" means prior to the Second Amendment Effective Date, the Existing Credit Agreement and, on and after the Second Amendment Effective Date, this Amended and Restated Credit and Guaranty Agreement, dated as of December 31, 2002, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Annualized Consolidated EBITDA" means, as of any date of determination, Consolidated EBITDA for the most recently completed Fiscal Quarter multiplied by four.

"Applicable Margin" means (i) from the Closing Date until the end of Stage 1, (a) with respect to Loans that are Eurodollar Rate Loans, 4.25% per annum and (b) with respect to Loans that are Base Rate Loans, an amount equal to the Applicable Margin for Eurodollar Rate Loans as set forth in clause (i)(a) above, minus 1.00% per annum; provided that, on and after the Effective Date the interest rates otherwise applicable pursuant to this clause (i) shall be increased by 0.50% per annum; and (ii) during Stage 2, (a) with respect to the Loans that are Eurodollar Rate Loans, a percentage, per annum, determined by reference to the Total Leverage Ratio in effect from time to time as set forth below:

Total Leverage Ratio	Applicable Margin for Eurodollar Rate
≥6.0:1.00	4.25%
<6.0:1.00 ≥4.5:1.00	4.00%
<4.5:1.00 ≥3.0:1.00	3.75%
<3.0:1.00	3.50%

and (b) with respect to Loans that are Base Rate Loans, an amount equal to the Applicable Margin for Eurodollar Rate Loans as set forth in clause (ii)(a) above minus 1.00% per annum. No change in the Applicable Margin contemplated by clause (ii) above shall be effective until three (3) Business Days after the date on which Administrative Agent shall have received the applicable financial statements and a Compliance Certificate pursuant to Section 5.1(d) calculating the Total Leverage Ratio. At any time Company has not submitted to Administrative Agent the applicable information as and when required under Section 5.1(d), the Applicable Margin shall be determined as if the Total Leverage Ratio were in excess of 6.00:1.00 until such time as Company has provided the information required under Section 5.1(d). Within one (1)

Business Day of receipt of the applicable information as and when required under Section 5.1(d), Administrative Agent shall give each Lender telefacsimile or telephonic notice (confirmed in writing) of the Applicable Margin in effect from such date.

"Applicable Reserve Requirement" means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against "Eurocurrency liabilities" (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

"Asset Sale" means a sale, lease or sublease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition (any such transaction, a **"Disposition"**) to, or any exchange of property with, any Person (other than Company or any Guarantor Subsidiary), in one transaction or a series of transactions, of all or any part of Company's or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any of Company's Subsidiaries, other than (i) inventory (or other assets) sold or leased in the ordinary course of business, (ii) disposals of obsolete, worn out or surplus property, (iii) Dispositions of other assets for aggregate consideration of less than $50,000 with respect to any transaction or series of related transactions and less than $250,000 in the aggregate during any Fiscal Year, (iv) sales of Cash Equivalents in the ordinary course of business, (v) Permitted Liens, and (vi) sale and leaseback transactions in connection with a Permitted Equipment Financing.

"Assignment Agreement" means an Assignment Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by Administrative Agent.

"Authorized Officer" means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president and one of its vice presidents (or the equivalent thereof), or such Person's chief financial officer and treasurer.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Base Rate" means, for any day, a rate per annum equal to the greater of (i) the Prime Rate in effect on such day and (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1%. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Base Rate Loan" means a Loan bearing interest at a rate determined by reference to the Base Rate.

"Beneficiary" means each Agent, Lender and Lender Counterparty.

"Book Runner" as defined in the preamble hereto.

"Borrower" means OpCo.

"Business Day" means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term **"Business Day"** shall mean any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"Capital Expenditure" means, for any period, the aggregate of all expenditures of any Person during such period that, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items, including without limitation construction in progress, reflected in the statement of cash flows of such Person. Notwithstanding the foregoing, the term **"Capital Expenditure"** shall not include capital expenditures constituting (i) the reinvestment of Net Asset Sale Proceeds or Net Insurance/Condemnation Proceeds made in accordance with Sections 2.12(a) and (b), (ii) Permitted Acquisitions and (iii) that portion of any capital expenditure solely attributable to or deemed paid for through the issuance by Company of a warrant to purchase capital stock of Company.

"Capital Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

"Cash" means money, currency or a credit balance in any demand or Deposit Account.

"Cash Equivalents" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; (v) repurchase obligations of any Lender or of any commercial bank that is a member of the Federal Reserve System, is organized under the laws of the United States or any State thereof and has combined capital and surplus of at least $1 billion having a term of not more than 90 days with respect to securities issued or fully guaranteed or insured by the Government of the United States and (vi) shares of any money market mutual fund that (a) has a substantial portion of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"Certificate re Non-Bank Status" means a certificate substantially in the form of Exhibit F.

"Change of Control" means, at any time, (i) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, other than the Principal Stockholders, (a) (x) shall have acquired beneficial ownership of 35% or more on a fully diluted basis of the voting and/or economic interest in the Capital Stock of Company and (y) the Principal Stockholders own, in the aggregate, a lesser percentage of the total voting and/or economic interest in the Capital Stock of Company than such Person or group and do not have the ability by voting power, contract or otherwise to elect or designate for election a majority of the board of directors (or similar governing body) of Company, or (b) shall have obtained the power (whether or not exercised) to elect a majority of the board of directors (or similar governing body) of Company; (ii) the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of Company shall cease to be occupied by Persons who either (a) were members of the board of directors of Company on the Second Amendment Effective Date or (b) were nominated for election by the board of directors of Company, a majority of whom were directors on the Second Amendment Effective Date or whose election or nomination for election was previously approved by a majority of such directors; (iii) STT shall cease to own or have the right to own at least 75% of the percentage of voting and/or economic interest of the Capital Stock of Company that it owns on the Second Amendment Effective Date on a fully diluted basis (excluding (y) options and stock issued pursuant to Company's stock incentive and stock purchase plans existing on the Second Amendment Effective Date; and (z)

stock issuable in connection with the issuance of A-2 Notes and associated warrants); or (iv) any "change of control" or similar event under the Securities Purchase Agreement or any document evidencing any Permitted Equipment Financing shall occur.

"Closing Date" means December 20, 2000, the date on which the conditions set forth in Section 3.1 of the Original Credit Agreement were satisfied.

"Collateral" means, collectively, all of the real, personal and mixed property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"Collateral Agent" as defined in the preamble hereto.

"Collateral Documents" means the Pledge and Security Agreement, the Mortgages, the Landlord Agreements, the Intercreditor Agreement and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to grant to Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations.

"Columbia" means Columbia Capital Partners and any affiliate thereof.

"Columbia Syndicate" means Lone Tree Capital and Goldman, Sachs & Co.

"Combination Agreement" means that certain Combination Agreement dated as of October 2, 2002 among Company, Eagle Panther Acquisition Corp., a Delaware corporation, Eagle Jaguar Acquisition Corp., a Delaware corporation, i-STT Pte Ltd, a corporation organized under the laws of the Republic of Singapore, STT Communications Ltd, a corporation organized under the laws of the Republic of Singapore, Pihana and Jane Dietze, as representative of the stockholders of Pihana.

"Company" as defined in the preamble hereto.

"Complementary Business" means storage services, content distribution, network management, security services, monitoring, site management and similar related activities, in each case relating to the operation of Permitted IBX Facilities.

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit C-1 or C-2.

"Consolidated Capital Expenditures" means, for any period, the aggregate of all Capital Expenditures of Company and its Subsidiaries during such period determined on a consolidated basis, in accordance with GAAP.

"Consolidated Cash Interest Expense" means, for any period, Consolidated Interest Expense for such period, excluding any amount not payable in Cash.

"Consolidated Current Assets" means, as at any date of determination, the total assets of Company and its Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash and Cash Equivalents.

"Consolidated Current Liabilities" means, as at any date of determination, the total liabilities of Company and its Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding the current portion of long term debt.

"Consolidated EBITDA" means, for any period, an amount determined for Company and its Subsidiaries on a consolidated basis equal to (i) the sum, without duplication, of the amounts for such period of (a) Consolidated Net Income, (b) Consolidated Interest Expense, (c) provisions for taxes based on income, (d) total depreciation expense, (e) total amortization expense, (f) to the extent deducted in determining Consolidated Net Income, any amount deducted solely as a result of the repayment of reimbursement obligations owed to issuing banks in connection with a drawing under letters of credit in an aggregate face amount of $25,000,000 in favor of iStar San Jose LLC, pursuant to a release of cash collateral in a like amount and (f) other non-Cash items reducing Consolidated Net Income (excluding any such non-Cash item to the extent that it represents an accrual or reserve for potential Cash items in any future period or amortization of a prepaid Cash item that was paid in a prior period), minus (ii) other non-Cash items increasing Consolidated Net Income for such period (excluding any such non-Cash item to the extent it represents an accrual of revenue, the reversal of an accrual or reserve for potential Cash item in any prior period, in each case, in the ordinary course of business) and (iii) interest income.

"Consolidated Excess Cash Flow" means, for any period, an amount (if positive) equal to: (i) the sum, without duplication, of the amounts for such period of (a) Consolidated EBITDA, minus (b) the Consolidated Working Capital Adjustment, minus (ii) the sum, without duplication, of the amounts for such period of (a) repayments of Consolidated Total Debt, (b) Consolidated Capital Expenditures (excluding any Capital Expenditures prohibited by Section 6.8) (net of (i) any proceeds of any related financings with respect to such expenditures, and (ii) any insurance and condemnation proceeds used to finance the replacement of destroyed or appropriated property), (c) Consolidated Cash Interest Expense; provided, that Consolidated Cash Interest Expense shall be deemed to include any savings realized by Company and its Subsidiaries attributable to interest deferrals and interest reductions in connection with the refinancing or exchange of any of the Senior Notes, and (d) provisions for current taxes based on income of Company and its Subsidiaries and payable in cash with respect to such period, and (e) to the extent not otherwise deducted in determining Consolidated Excess Cash Flow, Cash consideration paid for Permitted Acquisitions and Investments permitted hereunder (in each case, net of any proceeds of related financings and issuances of Capital Stock incurred to finance such Permitted Acquisitions and Investments).

"Consolidated Interest Expense" means, for any period, total interest expense (including commitment fees and that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and

bankers' acceptance financing and net costs under Interest Rate Agreements, but excluding, however, any amounts referred to in Section 2.9 payable on or before the Closing Date and fees payable to Lenders pursuant to Section 3.1(j).

"Consolidated Net Income" means, for any period, (i) the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary) in which any other Person (other than Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Company or any of its Subsidiaries by such Person during such period, (b) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with Company or any of its Subsidiaries or that Person's assets are acquired by Company or any of its Subsidiaries, (c) the income of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, and (e) (to the extent not included in clauses (a) through (d) above) any net extraordinary gains or net extraordinary losses.

"Consolidated Senior Secured Debt" means, as at any time of determination, the aggregate stated balance sheet amount of all outstanding Indebtedness of Company and its Subsidiaries under (i) this Agreement, (ii) the Permitted Equipment Financings, (iii) any secured trade payables and (iv) Capital Leases.

"Consolidated Total Capitalization" means the sum of (a) Consolidated Total Debt and (b) paid-in-equity capital of Company or any of its Subsidiaries (including preferred stock but excluding (i) any additional equity issued as pay-in-kind dividends on issued and outstanding equity securities and (ii) any accumulated deficits resulting from operations).

"Consolidated Total Debt" means, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness (without giving effect to any original issue discount) of Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP.

"Consolidated Working Capital" means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.

"Consolidated Working Capital Adjustment" means, for any period on a consolidated basis, the amount (which may be a negative number) by which Consolidated Working Capital as of the end of such period exceeds (or is less than) Consolidated Working Capital as of the beginning of such period.

"Contractual Obligation" means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Contributing Guarantors" as defined in Section 7.2.

"Conversion/Continuation Date" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"Conversion/Continuation Notice" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"Convertible Note Collateral Documents" means the Convertible Note Security Agreement, any landlord agreement or mortgage entered into with STT as the Convertible Note Agent (together with its permitted successors and assigns in such capacity, the **"Convertible Note Agent"**), the Intercreditor Agreement and all other instruments, documents and agreements delivered by the Company or any Subsidiaries in order to grant to Convertible Note Agent for the benefit of the holders of the Convertible Notes, a Lien on any real, personal or mixed property as security for the obligations of Company pursuant to the Securities Purchase Agreement.

"Convertible Note Documents" means collectively, (i) the Securities Purchase Agreement, (ii) the Convertible Notes, (iii) the Warrants, (iv) the Convertible Note Guaranty, (v) the Registration Rights Agreement and (vi) the Convertible Note Collateral Documents.

"Convertible Note Security Agreement" means the Pledge and Security Agreement entered into between Company and Convertible Note Agent in the form of Exhibit I, with such amendments, modifications or supplements as may be approved by the Administrative Agent, Collateral Agent and Convertible Note Agent and subject to the terms and provisions of the Intercreditor Agreement.

"Convertible Note Guaranty" means that certain Guaranty dated December 31, 2002 made by Equinix Operating Co., Inc., Equinix Europe, Inc. and Equinix-DC, Inc., in favor of each Holder under and as defined in the Securities Purchase Agreement and subject to the terms and provisions of the Intercreditor Agreement.

"Convertible Notes" means collectively, the A-1 Notes and A-2 Notes.

"Counterpart Agreement" means a Counterpart Agreement substantially in the form of Exhibit H.

"Credit Document" means any of this Agreement, the Notes, if any, the Collateral Documents, and all other documents, instruments or agreements executed and delivered by a Credit Party for the benefit of the Agents, or any Lender in connection herewith, including Hedge Agreements with any Lender Counterparty, in each case, as may be amended, supplemented or otherwise modified from time to time.

"Credit Extension" has the meaning assigned in the Existing Credit Agreement.

"Credit Party" means Company, OpCo and any of its Subsidiaries from time to time party to a Credit Document.

"Currency Agreement" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with Company's and its Subsidiaries' operations.

"Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Deferral Amount" means with respect to any proceeds received by Company pursuant to STT's exercise of the STT Additional Equity Option, (i) in an initial aggregate amount of up to $10,000,000, for each $1 of equity received by Company or any of its Subsidiaries, $3 of amortization scheduled in 2005 shall be deferred to 2006 pursuant to the terms of Section 2.10; and (ii) in a subsequent aggregate amount of up to $5,000,000, for each $1 of equity received by Company or any of its Subsidiaries, $2 of amortization scheduled for 2005 shall be deferred to 2006 pursuant to the terms of Section 2.10. In no event shall the total Deferral Amount exceed $40,000,000.

"Deposit Account" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Disposition" as defined within the definition Asset Sale.

"Disqualified Stock" means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to April 15, 2006; provided, however, that any Equity Interest that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Equity Interest upon the occurrence of a Change of Control or an Asset Sale shall not constitute Disqualified Stock if the terms of such Equity Interest provide that the Company may not repurchase or redeem such Equity Interest pursuant to such provisions unless such repurchase or redemption complies with Section 6.4 or (b) requires the payment of cash dividends or other payments to the holder thereon, unless through December 15, 2005 such cash dividends or other payments are only required to be paid and are only paid from the proceeds of the issuance of such Equity Interest and sums of such proceeds are at the time of such issuance placed in escrow for the purpose of making such payments sufficient to make such payments through such date and are at all times prior to such date sufficient therefor.

"Dollars" and the sign **"$"** mean the lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"Effective Date" means September 30, 2001, the date on which the conditions set forth in Section 3.1 of the Existing Credit Agreement were satisfied.

"Effective Date Mortgage" means a mortgage substantially in the form of Exhibit J annexed hereto.

"Effective Date Mortgage Modification" has the meaning given to such term in the Existing Credit Agreement.

"Eligible Assignee" means (i) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), and (ii) any commercial bank, financial institution, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans as one of its businesses; provided, no Affiliate of Company shall be an Eligible Assignee.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws" means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, guidance documents, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Company or any of its Subsidiaries or any Facility.

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

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA Affiliate" means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or

not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of Company or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of Company or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of Company or such Subsidiary and with respect to liabilities arising after such period for which Company or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"ERISA Event" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the occurrence of an act or omission which could give rise to the imposition on Company, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation

under Section 501(a) of the Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"Eurodollar Rate Loan" means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

"European Subsidiaries" means the Subsidiaries owned by Equinix Europe, Inc.

"Event of Default" means each of the conditions or events set forth in Section 8.1.

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

"Exchange Offer" means the exchange by Company of Senior Notes for Qualifying Equity and Cash pursuant to the terms and conditions of the Exchange Offer Documents.

"Exchange Offer Documents" means the Offer to Exchange and Consent Solicitation Statement, dated November 26, 2002, and the Letters of Transmittal/Consent referred to therein.

"Existing Indebtedness" means the Indebtedness listed on Schedule 6.1.

"Existing Credit Agreement" has the meaning assigned to that term in the recitals hereto.

"Existing Loans" means Loans outstanding under the Existing Credit Agreement immediately prior to satisfaction and/or waiver of the conditions to effectiveness set forth in Section 3.1 of this Agreement.

"Existing Mortgages" means the Mortgages granted prior to the date of the Existing Credit Agreement as security for the Obligations under the Original Credit Agreement.

"Facility" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Company or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"Fair Share" as defined in Section 7.2.

"Fair Share Contribution Amount" as defined in Section 7.2.

"Fair Share Shortfall" as defined in Section 7.2.

"Federal Funds Effective Rate" means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the

Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent, in its capacity as a Lender, on such day on such transactions as determined by Administrative Agent.

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Company that such financial statements fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"Financial Plan" as defined in Section 5.1(k).

"First Amendment" means that certain Waiver and First Amendment to Amended and Restated Credit and Guaranty Agreement among, Company, OpCo and the lenders and agents party thereto, which waived certain provisions and made certain amendments to the Existing Credit Agreement.

"First Amendment Effective Date" means July 31, 2002, the date of the satisfaction of the conditions precedent set forth in the First Amendment.

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than Permitted Liens.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Company and its Subsidiaries ending on December 31 st of each calendar year.

"Flood Hazard Property" means any Real Estate Asset subject to a mortgage in favor of the Collateral Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"Foreign Accounts Receivable" means, any receivable of Company and its Subsidiaries for products and services billed to customers which are not located in the United States or which are not denominated in US dollars receivables.

"Foreign Subsidiary" means, with respect to any Person, any Subsidiary that is not a Domestic Subsidiary.

"Funding Guarantors" as defined in Section 7.2.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"Governmental Acts" means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

"Governmental Authority" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Grantor" as defined in the Pledge and Security Agreement.

"Guaranteed Obligations" as defined in Section 7.1.

"Guarantor" means Company and each Subsidiary of Company other than OpCo and the Singapore Subsidiaries.

"Guarantor Subsidiary" means each Guarantor other than Company.

"Guaranty" means the guaranty of each Guarantor set forth in Section 7.

"Hazardous Materials" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedge Agreement" means an Interest Rate Agreement or a Currency Agreement entered into with a Lender Counterparty in order to satisfy the requirements of this Agreement or otherwise in the ordinary course of Company's or any of its Subsidiaries' businesses and not for speculative purposes.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under

such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"IBX Facilities" means Internet Business Exchange facilities, including, without limitation, the Permitted IBX Facilities, which are designed, developed (or acquired by) and operated by Company or one of its Subsidiaries for the purpose of providing Internet access, colocation services, telecommunications access, mechanical and power systems and operations and customer service and support and is either owned in fee by Company or one of its Subsidiaries or operated under a distinct long term lease agreement between Company or one of its Subsidiaries and a landlord.

"Increased-Cost Lender" as defined in Section 2.22.

"Indebtedness", as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA and ordinary course trade payables), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the greater of the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings and the maximum amount for which such Person may otherwise be liable under such letters of credit; (vii) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (viii) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (ix) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (ix), the primary purpose or intent thereof is as described in clause (viii) above; and (x) obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement or Currency Agreement, whether entered into for hedging or speculative purposes; provided, in no event shall obligations under any Interest Rate Agreement or any Currency Agreement be deemed "Indebtedness" for any purpose under Sections 6.6 or 6.7, as applicable.

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims

(including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such indemnities shall be designated as a party or a potential party thereto, and any fees or expenses incurred by indemnities in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such indemnities, in any manner relating to or arising out of (i) this Agreement (which for the avoidance of doubt shall include the Existing Credit Agreement) or the other Credit Documents or the transactions contemplated hereby or thereby (including (i) all prior negotiations and prior acts of Lenders in connection therewith and (ii) the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds of thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (ii) the statements contained in the commitment letter delivered by any Lender to Company with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries.

"Indemnitees" as defined in Section 10.3.

"Intellectual Property" as defined in the Pledge and Security Agreement.

"Intellectual Property Collateral" means all of the Intellectual Property subject to the Lien of the Pledge and Security Agreement.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated December 31, 2002 by and among Administrative Agent, Collateral Agent and Convertible Note Agent substantially in the form of Exhibit Q.

"Interest Coverage Ratio" means the ratio, as of the last day of any Fiscal Quarter, of (i) Annualized Consolidated EBITDA for the Fiscal Quarter then ended, to (ii) Consolidated Cash Interest Expense for the four-Fiscal Quarter period then ended.

"Interest Payment Date" means with respect to (i) any Base Rate Loan, the last day of each month commencing on the first such date to occur after the Effective Date, the date of repayment or prepayment of any portion of such Loan and the Maturity Date; and (ii) any Eurodollar Rate Loan, the last day of each month, the last day of each Interest Period applicable to such Loan, the date of repayment or prepayment of any portion of such Loan and the Maturity Date.

"Interest Period" means, in connection with a Eurodollar Rate Loan, an interest period of one, two, or three months, as selected by the Borrower in the applicable

Conversion/Continuation Notice, (i) initially, commencing on the Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c), of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of any Term Loans shall extend beyond the Maturity Date.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with Company's and its Subsidiaries' operations.

"Interest Rate Determination Date" means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Investment" means (i) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than by Company or any wholly-owned Guarantor Subsidiary with respect to any wholly-owned Guarantor Subsidiary); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Company from any Person (other than Company or any wholly-owned Guarantor Subsidiary), of any Capital Stock of such Subsidiary; and (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Company or any of its Subsidiaries to any other Person (other than by Company or any wholly-owned Guarantor Subsidiary to any wholly-owned Guarantor Subsidiary), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"Investment Related Property" as defined in the Pledge and Security Agreement.

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership, limited liability company, or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"Landlord Agreement" means an agreement duly executed by the landlord of any Leasehold Property substantially in the form of Exhibit K with such amendments or modifications as may be approved by Collateral Agent and its counsel.

"Lead Arranger" as defined in the preamble hereto.

"Leasehold Property" means any leasehold interest (other than San Jose Ground Lease) of Company or any of its Subsidiaries as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"Lender" means each financial institution that became a Lender under this Agreement as of the Closing Date, together with each such institution's successors and permitted assigns.

"Lender Counterparty" means each Lender or any Affiliate of a Lender Counterparty to a Hedge Agreement, including, without limitation, each such Affiliate that enters into a joinder agreement with the Collateral Agent.

"Lien" means (i) any lien, claim, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"Loan" means (y) prior to the Second Amendment Effective Date, any Term Loan outstanding pursuant to the Existing Credit Agreement and (z) on and after the Second Amendment Effective Date, a Term Loan.

"Margin Stock" as defined in Regulation T, U or X of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business, operations, properties, assets, condition (financial or otherwise) or prospects (with respect to prospects only, based upon the Second Amendment Effective Date Financial Plan) of Company and its Subsidiaries taken as a whole; (ii) the ability of any Credit Party to fully and timely perform the Obligations; (iii) the legality, validity, binding effect or enforceability against a Credit Party of a Credit Document to which it is a party; (iv) the rights, remedies and benefits available to, or conferred upon, any Agent and any Lender under any Credit Document; or (v) the Collateral Agent's Liens, on behalf of Secured Parties, on the Collateral or the priority of such Liens.

"Material Contract" means any contract or other arrangement to which Company or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect including, without limitation, those contracts listed on Schedule 4.17(a).

"Material Real Estate Asset" means (i) (a) any fee-owned Real Estate Asset located in the United States or Canada having a fair market value in excess of $250,000 as of the date of the acquisition thereof, (b) any Leasehold Property which is a IBX Facility listed on Schedule 1.1(a) and all Leasehold Properties which are IBX Facilities that acquired after the Second Amendment Effective Date in which the Collateral Agent in its reasonable judgment determines to be material and (c) all Leasehold Properties which are not IBX Facilities (other than the San Jose Ground Lease and headquarter buildings) other than those with respect to which the aggregate payments under the term of the lease are less than $100,000 per annum or (ii) any Real Estate Asset (other than the San Jose Ground Lease and existing headquarters) located in the United States or Canada that the Requisite Lenders have determined is material to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any Subsidiary thereof taken as a whole.

"Maturity Date" means the earlier of (i) March 31, 2006, (ii) in the event that Company receives proceeds from the exercise by STT of any STT Additional Equity Option, then the Maturity Date shall be extended in accordance with Section 2.10, (iii) the date the Obligations are paid in full pursuant to any prepayment made in accordance with Sections 2.11, 2.12 or 2.13, and (iv) the date on which the Loans shall become due and payable, whether by acceleration or otherwise.

"Moody's" means Moody's Investor Services, Inc.

"Mortgage" means, collectively, the Existing Mortgages, as modified by the Effective Date Mortgage Modifications, and the Effective Date Mortgages, together with any amendments, restatements, supplements or other modifications entered into from time to time in accordance herewith.

"Multiemployer Plan" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"NAIC" means The National Association of Insurance Commissioners, and any successor thereto.

"Narrative Report" means, with respect to the financial statements for which such narrative report is required, a narrative report describing any material events affecting the operations of Company and its Subsidiaries (including, the details with respect to the Singapore Subsidiaries) for the Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate in a form reasonably satisfactory to the Administrative Agent.

"Net Asset Sale Proceeds" means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or as a result of the release of any amounts subject to any reserve described in clause (c) below or otherwise, but only as and when so received) received by Company or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b)

payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (c) attorneys' fees, accountants' fees, investment banking fees and other customary costs, fees and expenses and commissions actually incurred in connection therewith, and (d) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Company or any of its Subsidiaries in connection with such Asset Sale.

"Net Insurance/Condemnation Proceeds" means an amount equal to: (i) any Cash payments or proceeds received by Company or any of its Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including (1) income or gains taxes payable by the seller as a result of any gain recognized in connection with the foregoing, (2) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of any sale of such assets, (3) attorneys' fees, accountants' fees, investment banking fees and other customary costs, fees and expenses and commissions actually incurred in connection therewith, and (4) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such asset sale undertaken by Company or any of its Subsidiaries in connection with such asset sale.

"Net Revenues" means, for any period, the net revenues of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP (it being understood that, in any event such net revenue shall be net of sales charges and discounts).

"Non-Consenting Lender" as defined in Section 2.22.

"Non-US Lender" as defined in Section 2.19(c).

"Note" means a Tranche A Term Loan Note or a Term Loan Note.

"Notice" means an Issuance Notice, or a Conversion/Continuation Notice.

"Obligations" means all obligations of every nature of each Credit Party from time to time owed to the Agents, the Lenders or any of them or their respective Affiliates (including, without limitation, all former Agents, Lenders or Lender Counterparties), under any Credit Document (including, without limitation, with respect to a Hedge Agreement, net obligations owed thereunder to any person who was a Lender or an Affiliate of a Lender at the

time such Hedge Agreement was entered into and, with respect to any period prior to the Second Amendment Effective Date, any obligations under the Existing Credit Agreement), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), payments for early termination of Hedge Agreements, fees, expenses, indemnification or otherwise.

"Obligee Guarantor" as defined in Section 7.7.

"Organizational Documents" means (i) with respect to any corporation, its certificate or articles of incorporation, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its certificate of formation or articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Original Credit Agreement" means that certain Credit and Guaranty Agreement dated as of December 20, 2000 by and among Credit Parties and the Lenders and Agents party thereto.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

"Permitted Acquisition" means any acquisition whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such Securities in the nature of directors' qualifying shares required pursuant to applicable law) issued by such Person or any newly formed Subsidiary of Company in connection with such acquisition shall be owned by Company or a Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, as of

the date such Person becomes a Subsidiary of Company, each of the actions set forth in Sections 5.9 and/or 5.10, as applicable;

(iv) whether the consideration paid in such acquisition is cash or stock, Company shall deliver to Agents a Financial Officer's Certificate and other financial statements and projections demonstrating (to the reasonable satisfaction of Agents) that Company and its Subsidiaries shall be in compliance, as of the first day of the most recently ended Fiscal Quarter and after giving pro forma effect on a going-forward basis through the Maturity Date to such acquisition with the covenants contained in this Agreement;

(v) Company shall have delivered to the Agents (A) at least ten (10) Business Days prior to such proposed acquisition, a Compliance Certificate evidencing compliance with Sections 6.6, 6.7 or 6.8, as applicable, as required under clause (iv) above, together with all relevant financial information with respect to such acquired assets, including, without limitation, the aggregate consideration for such acquisition and any other information required to demonstrate compliance with Sections 6.6, 6.7 or 6.8, as applicable;

(vi) any Person or assets or division as acquired in accordance herewith shall be in the same business or lines of business in which Company and/or its Subsidiaries are engaged as of the Second Amendment Effective Date, a Complementary Business, an IBX Facility or such other lines of business as may be consented to by Requisite Lenders;

(vii) any Person or assets or division as acquired in accordance herewith shall be acquired by OpCo; and

(viii) Company shall have satisfied the other requirements set forth in Section 6.9(d).

"Permitted Equipment Financing" means (A) the secured equipment financing facilities listed, and designated as such, on Schedule 6.1 as of Effective Date and (B) one or more purchase money, vendor or other equipment financing facilities or leases (i) in an aggregate principal amount not in excess of $15,000,000 outstanding at any time, (ii) pursuant to which Company or its Subsidiaries may be advanced funds principally to purchase or lease IBX Facility equipment or headquarters equipment or services and to pay the costs of the engineering, construction, installation, importation, development and improvement of such equipment incurred after the Effective Date, (iii) which may be secured only by the assets being financed directly with the proceeds of such financing (it being understood that equipment acquired no earlier than ninety (90) days prior to the incurrence of such Permitted Equipment Financing may be determined to be financed with the proceeds thereof); provided, such equipment was acquired and installed after the Effective Date, (iv) until such time as the Collateral Agent has received a First Priority Lien on such Subsidiary, with respect to any such financings incurred by any Subsidiary, such financings shall be without recourse to Company, and (v) with respect to which no scheduled repayments or prepayments of principal are required prior to the Maturity Date; provided, that with respect to no more than $5,000,000 aggregate principal amount of Permitted

Equipment Financing (excluding those Permitted Equipment Financings listed on Schedule 6.1), equal monthly repayments of principal may be made for a three year period commencing no earlier than March 31, 2003.

"Permitted IBX Facilities" means (i) those IBX Facilities listed on Schedule 1.1(a) and (ii) those IBX Facilities acquired after the Second Amendment Effective Date pursuant to a Permitted Acquisition.

"Permitted Liens" means each of the Liens permitted pursuant to Section 6.2.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Pledge and Security Agreement" means the Amended and Restated Pledge and Security Agreements in the form of Exhibit I as it may be amended, supplemented or otherwise modified from time to time by Company, the Borrower and/or each Guarantor.

"Pihana" means Pihana Pacific, Inc., a Delaware corporation.

"PIK Notes" means notes representing interest payments on the Convertible Notes and issued in accordance with Section 9.8 of the Securities Purchase Agreement.

"Prime Rate" means the rate of interest per annum that the Administrative Agent announces from time to time as its prime lending rate, as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Principal Office" means, the Administrative Agent's "Principal Office" as set forth on Appendix B, or such other office as Administrative Agent may from time to time designate in writing to the Borrower and each Lender.

"Principal Stockholders" means STT and its Related Persons.

"Pro Forma Consolidated Debt Service" means, as of any date of determination, the sum, without duplication, of (i) Consolidated Cash Interest Expense and (ii) all scheduled amortization (including any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment) in respect of Indebtedness, in each case payable by Company and its Subsidiaries during the immediately succeeding four Fiscal Quarters assuming, for purposes of calculating Consolidated Cash Interest Expense for any such succeeding four Fiscal Quarter period, Indebtedness outstanding as of the date of such calculation shall remain outstanding during such four Fiscal Quarter period (except to the extent of any scheduled amortization, redemption, retirement or similar payment scheduled during such

four Fiscal Quarter period) and that the average interest rate applicable to outstanding Indebtedness of the Credit Parties as of the date of such calculation applies with respect to Indebtedness outstanding during such four Fiscal Quarter period.

"Pro Forma Debt Service Coverage Ratio" means the ratio as of the last day of any Fiscal Quarter of (i) Annualized Consolidated EBITDA for the Fiscal Quarter then ended to (ii) Pro Forma Consolidated Debt Service, in each case as set forth in the most recent Compliance Certificate delivered by Company to Administrative Agent pursuant to Section 5.1(d).

"Pro Rata Share" means with respect to all payments, computations and other matters relating to the Term Loan of any Lender, the percentage obtained by dividing (x) the Term Loan Exposure of that Lender by (y) the aggregate Term Loan Exposure of all Lenders, as the applicable percentage may be adjusted by assignments permitted pursuant to Section 10.6. The Pro Rata Share of each Lender as of the Second Amendment Effective Date for is set forth opposite the name of that Lender in Appendix A-2.

"Purchase Money Loan" shall have the meaning ascribed to such term in the Original Credit Agreement.

"Qualifying Equity" means any Equity Interest other than Disqualified Stock issued by Company after the Effective Date.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

"**Recapitalization Transactions"** means the transactions contemplated by the Combination Agreement, including without limitation, (w) the sale by Company to STT of common and preferred equity, (x) the stock purchase by Eagle Jaguar Acquisition Corp. of all of the outstanding capital stock of i-STT Pte Ltd, a corporation organized under the laws of the Republic of Singapore, (y) the merger of Pihana with and into Eagle Panther Acquisition Corp and (z) the reorganization of the Pihana and i-STT Pte Ltd Subsidiaries in accordance with Section 6.16 of the Combination Agreement.

"Record Document" means, with respect to any Leasehold Property, (i) the lease evidencing such Leasehold Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leasehold Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to Collateral Agent.

"Recorded Leasehold Interest" means a Leasehold Property with respect to which a Record Document has been recorded in all places necessary or desirable, in Administrative Agent's reasonable judgment, to give constructive notice of such Leasehold Property to third-party purchasers and encumbrancers of the affected real property.

"Register" as defined in Section 2.5(b).

"Registration Rights Agreement" means that certain Registration Rights Agreement by and among Company and the initial purchasers named therein and in the form of Exhibit 7,1(j)(iv) to the Securities Purchase Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Person" means any Person who controls, is controlled by or is under common control with STT; provided that for purposes of this definition "control" means the beneficial ownership of more than 50% of the total voting power of a Person normally entitled to vote in the election of directors, managers or trustees, as applicable, of a Person; provided, further, that with respect to any natural Person, each member of such Person's immediate family shall be deemed to be a Related Person of such Person.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"Replacement Lender" as defined in Section 2.22.

"Requisite Lenders" means one or more Lenders having or holding Term Loan Exposure, representing more than 50% of the aggregate Term Loan Exposure of all Lenders.

"Restricted Junior Payment" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Company or OpCo now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Company now or hereafter outstanding except to the extent payable in exchange for shares of Capital Stock of Company, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Company or OpCo now or hereafter outstanding except to the extent paid with shares of Capital Stock of Company or OpCo or warrants, options or other rights to acquire any such shares, (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, the Convertible Notes, (v) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, the Senior Notes, and any

Permitted Equipment Financing; provided that Restricted Junior Payments shall not include (x) the issuance of the Warrants on the Second Amendment Effective Date, or the exercise of Warrants from and after the Second Amendment Effective Date in accordance with the terms and conditions thereof, (y) the conversion of the Convertible Notes for Qualifying Equity of Company, or the conversion of any such Qualifying Equity, made after the Second Amendment Effective Date in accordance with the terms and conditions of the Convertible Note Documents and (z) the acquisition by STT of common stock and series A preferred equity of Company pursuant to STT's exercise of the STT Additional Equity Option.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw Hill Corporation.

"San Jose Ground Lease" means the Ground Lease by and between *i*Star San Jose, LLC, as Lessor, and Company, as Lessee, dated June 21, 2000 as amended or restated from time to time but not, in any event, such that the amounts payable with respect thereto exceed amounts payable with respect thereto as contemplated by the Second Amendment Effective Date Financial Plan or otherwise materially increase the obligations of Company thereunder.

"Second Amendment Effective Date" means the date on which the conditions to effectiveness set forth in Section 3.1 have been satisfied or waived by the Lenders.

"Second Amendment Effective Date Certificate" means a certificate in the form of Exhibit G annexed hereto dated as of the Second Amendment Effective Date and duly executed by an Authorized Officer of Company.

"Second Amendment Effective Date Financial Plan" as defined in Section 4.8.

"Second Amendment Effective Date Financial Statements" means as of the Second Amendment Effective Date, (i) the audited financial statements of Company and its Subsidiaries for Fiscal Year 2001, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year and (ii) the unaudited financial statements of Company and its Subsidiaries as of the Fiscal Quarter ending September 30, 2002, consisting of a balance sheet and the related consolidated statements of income and cash flows for the nine-month period ending on such date, and, in the case of clauses (i) and (ii), certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"Secured Parties" as defined in the Pledge and Security Agreement.

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in

temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

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

"Securities Purchase Agreement" means that certain Securities Purchase Agreement dated as of October 2, 2002 by and among Company, the guarantors party thereto from time to time and the purchasers named therein.

"Senior Leverage Ratio" means the ratio, as of the last day of any Fiscal Quarter, of (i) Consolidated Senior Secured Debt as of such date to (ii) Annualized Consolidated EBITDA.

"Senior Notes" means the 13% Senior Notes due 2007 issued by Company in the aggregate principal amount of $200,000,000 pursuant to the Senior Notes Indenture, as in effect on the Closing Date and as such notes may thereafter be amended, restated, supplemented or otherwise modified from time to time to the extent permitted under Section 6.16.

"Senior Notes Indenture" means the Senior Notes Indenture dated as of December 1, 1999 between Company and State Street Bank and Trust Company of California, N.A., as trustee, pursuant to which the Senior Notes have been issued, as in effect on the Closing Date and as such indenture may thereafter be amended, restated, supplemented or otherwise modified from time to time to the extent permitted under Section 6.16.

"Singapore Subsidiaries" means each of the Subsidiaries listed on Schedule 1.1(b).

"Singapore Subsidiaries Investment Certificate" means the certificate in the form of Exhibit P hereto.

"Solvent" means, with respect to any Person, that as of the date of determination both (i) (a) the sum of such Person's debt (including contingent liabilities) does not exceed all of its property, at a fair valuation; (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and matured; (c) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (d) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Stand-Alone Cash Flow" means, for any period, an amount determined for any Permitted Acquisition acquired pursuant to Section 6.9(d) equal to "Operating Cash Flow" as defined in accordance with GAAP less, "Investing Cash Flow" as defined in accordance with GAAP.

"Stage 1" means the period from the Second Amendment Effective Date to and including June 30, 2004.

"Stage 2" means the period from July 1, 2004 through the Maturity Date.

"STT" means i-STT Investments Pte Ltd., a corporation organized under the laws of the Republic of Singapore.

"STT Additional Equity Option" means the option of STT to purchase additional common equity and series A preferred equity above the equity contemplated to be acquired by the conversion of the Convertible Notes held by STT, and pursuant to the terms of the Warrants, in an aggregate amount not to exceed $30,000,000.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

"Tax" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed; provided, "Tax on the overall net income" of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person's applicable principal office (and/or, in the case of a Lender, its lending office) is located or in which that Person (and/or, in the case of a Lender, its lending office) is deemed to be doing business on all or part of the net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

"Term Loan" means a Term Loan outstanding pursuant to Section 2.1(b) of this Agreement.

"Term Loan Exposure" means, with respect to any Lender, the outstanding principal amount of the Term Loan of such Lender.

"Term Loan Installments" as defined in Section 2.10.

"Term Loan Installment Date" as defined in Section 2.10.

"Term Loan Note" means a promissory note in the form of Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Terminated Lender" as defined in Section 2.22.

"Total Leverage Ratio" means the ratio as of the last day of any Fiscal Quarter of (a) Consolidated Total Debt to (b) Annualized Consolidated EBITDA.

"Tranche A Term Loan" has the meaning assigned to that term in the Existing Credit Agreement.

"Tranche A Term Loan Note" means a promissory note in the form of Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Type of Loan" means with respect to any of the Loans, a Base Rate Loan or a Eurodollar Rate Loan.

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"UCC Questionnaire" means any certificate in form satisfactory to the Collateral Agent and its counsel that provides information with respect to any personal or mixed property of each Credit Party.

"Unadjusted Eurodollar Rate Component" means that component of the interest costs to Company in respect of a Eurodollar Rate Loan that is based upon the rate obtained pursuant to clause (i) of the definition of Adjusted Eurodollar Rate.

"Warrants" means collectively, the following warrants issued in connection with the Securities Purchase Agreement: (i) the Cash Trigger Warrants, (ii) the Common Warrants, (iii) the Preferred Warrants and (iv) the Change of Control Warrants, as all such terms are defined in the Securities Purchase Agreement.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Lenders pursuant to Section 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(f)), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements.

1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

SECTION 2. LOANS

2.1 Confirmation and Redesignation of Existing Loans as Term Loans.

(a) Each Credit Party acknowledges and confirms that, immediately prior to giving effect to the prepayment made on the Second Amendment Effective Date pursuant to Section 3.1, each Lender held Existing Loans in the respective principal amounts set forth opposite their names on Schedule A-1 annexed hereto. Each Credit Party hereby represents, warrants, agrees, and covenants that there are no defenses, rights of set off, claims or counterclaims against any Agent or Lender in regard to its Obligations in respect of such Existing Loans with respect to the Existing Credit Agreement or otherwise.

(b) Immediately following the prepayment of Existing Loans contemplated by Section 3.1 the remaining aggregate principal balance of Existing Loans shall be automatically redesignated pursuant to this Section 2.1(b) as Term Loans and shall thereafter be treated as Term Loans made to Borrower for all purposes under this Agreement. Immediately after giving effect to the foregoing, the aggregate principal amount of outstanding Term Loans shall be $91,509,562.50, and each Lender's Pro Rata Share of the outstanding Term Loans shall be as set forth on Schedule A-2. Any Term Loan repaid or prepaid may not be reborrowed. Subject to Sections 2.10, 2.11(a) and 2.12, all amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Maturity Date.

2.2 [Reserved]

2.3 Pro Rata Shares. All Term Loans shall be deemed made.

2.4 Use of Proceeds. The proceeds of the Loans have been used in accordance with the terms of Section 2.4 of the Existing Credit Agreement.

2.5 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Indebtedness of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not

affect Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register the Loans, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on the Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any Loan. Borrower hereby designates the Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the Register as provided in this Section 2.5, and Borrower hereby agrees that, to the extent the Administrative Agent serves in such capacity, the Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to the Borrower (with a copy to Administrative Agent), at any time, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Effective Date (or, if such notice is delivered after the Effective Date, promptly after the Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

2.6 Interest on Loans.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or

(ii) if a Eurodollar Rate Loan, at the Adjusted Eurodollar Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by the Borrower and notified to Administrative Agent and Lenders pursuant to the applicable Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) In connection with Eurodollar Rate Loans there shall be no more than ten (10) Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Conversion/Continuation Notice,

such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as a Base Rate Loan). In the event the Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Conversion/Continuation Notice, the Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to Section 2.6(a) shall be computed in the case of Base Rate Loans on the basis of a 365-day or 366-day year, as the case may be, and in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan shall be payable in arrears (i) on each Interest Payment Date applicable to that Loan; (ii) in the case of any prepayment of that Loan, whether voluntary or mandatory, on the date of prepayment (to the extent accrued on the amount being prepaid); and (iii) at the Maturity Date.

2.7 Conversion/Continuation.

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, the Borrower shall have the option:

(i) to convert at any time all or any part of any Loan equal to $1,000,000 and integral multiples of $500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless the Borrower shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $1,000,000 and integral multiples of $500,000 in excess of that amount as a Eurodollar Rate Loan.

(b) The Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one (1) Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three (3) Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith.

2.8 Default Interest. Upon the occurrence and during the continuance of an Event of Default, the principal amount of all Loans and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder not paid when due, in each case whether at stated maturity, by notice of prepayment, by acceleration or otherwise, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 5.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 5.0% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 5.0% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.8 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, any other Agent or any Lender.

2.9 Fees.

(a) In the event that STT exercises the STT Additional Equity Option, Company agrees to pay to the Administrative Agent for distribution to the Lenders in accordance with each Lender's Pro Rata Share, a fee equal to 1.0% of the principal amount of Loans outstanding at the time Company receives the proceeds from such exercise of the STT Additional Equity Option. All fees referred to in this Section 2.9(a) shall be paid to Administrative Agent at its Principal Office and upon receipt, Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereto.

(b) In addition to any of the foregoing fees, Company agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon by Company and such Agents.

2.10 Scheduled Payments

Scheduled Term Loan Installments. The principal amounts of the Term Loans shall be repaid in the aggregate amounts set forth below (each, a **"Term Loan Installment"**) on the corresponding date set forth below (each, a **"Term Loan Installment Date"**):

Term Loan Installment Dates	Term Loan Installments
September 30, 2004	$ 2,500,000
December 31, 2004	$ 2,500,000
March 31, 2005	$ 10,000,000
June 30, 2005	$ 15,750,000
September 30, 2005	$ 21,500,000
December 31, 2005	$ 35,250,000
March 31, 2006	$ 5,000,000

Notwithstanding the foregoing, (i) such Term Loan Installments shall be reduced in connection with any voluntary or mandatory prepayments of the Loans, in accordance with Sections 2.11, 2.12 and 2.13, as applicable; (ii) the Loans, together with all other amounts owed hereunder with respect thereto, shall, in any event, be paid in full no later than the Maturity Date; and (iii) in the event that as of any Term Loan Installment Date (A) either (y) Company is not in compliance with the minimum Cash covenant set forth in Schedule 6.6 or (z) an Event of Default pursuant to Section 8.1(a) shall have occurred and is continuing; (B) Company is unable to raise equity proceeds from any Person other than STT or its affiliates; and (C) STT exercises the STT Additional Equity Option, then, the Term Loan Installments for each Fiscal Quarter in Fiscal Year 2005 set forth above shall be deferred on a pro rata basis by an amount equal to the Deferral Amount to the corresponding Fiscal Quarter in Fiscal Year 2006, and in connection therewith, the Maturity Date shall be extended to December 31, 2006.

2.11 Voluntary Prepayments.

(a) Voluntary Prepayments.

(i) Any time and from time to time:

(1) with respect to Base Rate Loans, the Borrower may prepay, subject to Section 2.17(c), any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of $2,000,000 and integral multiples of $1,000,000 in excess of that amount; and

(2) with respect to Eurodollar Rate Loans, the Borrower may prepay, subject to Sections 2.11(c) and 2.17, any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $2,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) All such prepayments shall be made:

(1) upon not less than one (1) Business Days' prior written or telephonic notice in the case of Base Rate Loans; and

(2) upon not less than three (3) Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans,

in each case given to Administrative Agent, as the case may be, by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (and Administrative Agent will promptly transmit such telephonic or original notice by telefacsimile or telephone to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein.

2.12 Mandatory Prepayments.

(a) Asset Sales. If, within the period of one hundred eighty (180) days after the receipt by Company or any of its Subsidiaries of Net Asset Sale Proceeds, OpCo (or to the extent such Net Asset Sale Proceeds are proceeds of the sale of assets of Company, Company) has not invested (or committed to invest within 180 days and actually invested within a period of 270 days) such Net Asset Sale Proceeds in long term productive assets of the general type used in the business of Company and its Subsidiaries, as certified to Administrative Agent by Company, then, to the extent the Borrower has not previously done so, the Borrower shall prepay Loans as set forth in Section 2.13 in an amount equal to the excess of such Net Asset Sale Proceeds over amounts invested as aforesaid.

(b) Insurance/Condemnation Proceeds. If, within the period of one hundred eighty (180) days after the receipt by Company or any of its Subsidiaries of Net Insurance/Condemnation Proceeds, OpCo (or to the extent such Net Asset Sale Proceeds are proceeds of the sale of assets of Company, Company) has not invested (or committed to invest within 180 days and actually invested within a period of 270 days) such Net Insurance/Condemnation Proceeds in long term productive assets of general type used in the business of Company and its Subsidiaries, as certified to Administrative Agent by Company then, to the extent the Borrower has not previously done so, the Borrower shall prepay Loans as set forth in Section 2.13, in an amount equal to the excess of such Net Insurance/Condemnation Proceeds over amounts invested as aforesaid.

(c) Aggregate Excess Cash. In the event that there shall be Aggregate Excess Cash for any Fiscal Quarter, commencing with the Fiscal Quarter ending March 31, 2004, the Borrower shall, no later than forty-five (45) days after the end of such Fiscal Quarter, prepay the Loans as set forth in Section 2.13 in an aggregate amount equal to 50% of such Aggregate Excess Cash.

(d) Issuance of Equity Securities. If Company or any of its Subsidiaries shall receive any Cash proceeds from a capital contribution to, or the issuance of any Capital Stock of, Company or any of its Subsidiaries (other than pursuant to the STT Additional Equity Option, the Exchange Offer, the conversion of the Convertible Notes or any employee stock or stock option compensation plan), Borrower shall prepay the Loans as set forth in Section 2.13 in an aggregate amount equal to (y) one hundred percent (100%) of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses if such issuance of Capital Stock is to Columbia and any member of the Columbia Syndicate and (z) fifty percent (50%) of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses if such issuance of Capital Stock is to

any other Person; provided, that the maximum aggregate prepayment amount pursuant to this Section 2.12(d), together with prepayments made pursuant to Sections 2.12(e) and 2.12(g), shall not exceed $5,000,000; provided, further, that with respect to the prepayment set forth in (z) above, such prepayment requirement shall expire on June 30, 2003.

(e) Excess of Projected Cash. In the event Company and its Subsidiaries hold Cash and Cash Equivalents for the Fiscal Quarters ending March 31, 2004 and June 30, 2004 in excess of the minimum projected Cash and Cash Equivalents for such Fiscal Quarters as set forth in the Second Amendment Effective Date Financial Plan (the **"Projected Cash"**), then Borrower shall prepay the Loans as set forth in Section 2.13 in an aggregate amount equal to 100% of such Cash and Cash Equivalents in excess of the Projected Cash; provided, that the maximum aggregate prepayment amount pursuant to this Section 2.12(e), together with any prepayments made pursuant to Sections 2.12(d) and 2.12(g), shall not exceed $5,000,000.

(f) Cash Payments on Senior Notes. In the event that Company, Borrower or any of their Subsidiaries makes any cash payment of interest, principal or any other amount on the Senior Notes (other than any cash amounts paid pursuant to the Exchange Offer and fees and expenses required to be paid pursuant to the Senior Note Indenture), then Borrower shall simultaneously prepay the Loans as set forth in Section 2.13 in an amount equal fifty percent (50%) of such payment made on the Senior Notes.

(g) Issuance of Additional Convertible Notes. In the event that Company issues any Convertible Notes in excess of the $30,000,000 contemplated to be issued on the Second Amendment Effective Date, then Borrower shall prepay the Loans as set forth in Section 2.13 in an amount equal to (y) one hundred percent (100%) of the proceeds received by Company in connection with such issuance if such additional Convertible Notes are issued to Columbia and any member of the Columbia Syndicate and (z) fifty percent (50%) of the proceeds received by Company in connection with such issuance of additional Convertible Notes to any other Person; provided, that the maximum aggregate prepayment amount pursuant to this Section 2.12(g), together with any prepayments made pursuant to Section 2.12(d) and 2.12(e), shall not exceed $5,000,000.

(h) Excess Consolidated Capital Expenditures. In the event that Company incurs any Excess Consolidated Capital Expenditures pursuant to Section 6.8, then, Borrower shall simultaneously prepay the Loans as set forth in Section 2.13 in an amount equal to fifty percent (50%) of the amount of such Excess Consolidated Capital Expenditures.

(i) Other Prepayments. Company shall from time to time prepay the Loans as set forth in Section 2.13 in an amount equal to the amounts set forth in Sections 6.9(d) and 6.18(c).

(j) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.12(a) through 2.12(i), Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer (a copy of which Administrative Agent shall promptly provide to each Lender) demonstrating the calculation of the amount of the applicable proceeds,

Aggregate Excess Cash (which, in such case, shall demonstrate total Cash and Cash Equivalents in excess of $20,000,000 on the consolidated balance sheet of Company and its Subsidiaries), excess Projected Cash, Excess Consolidated Capital Expenditures or any cash payments made to the holders of Senior Notes, as the case may be. In the event that in connection with any prepayment made pursuant to this Section 2.12 (other than with respect to Sections 2.12(c), 2.12(e), 2.12(h) or 2.12(i)), the Borrower shall subsequently determine that the actual amount of proceeds received exceeded the amount set forth in such certificate, the Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent (a copy of which Administrative Agent shall promptly provide to each Lender) a certificate of an Authorized Officer demonstrating the derivation of such excess.

2.13 Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments by Type of Loans. Any prepayment of any Loan pursuant to Section 2.11(a) shall be applied to prepay outstanding Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof). Any prepayment of Loans pursuant to Section 2.11(a) shall be further applied, on a pro rata basis, to the remaining scheduled Term Loan Installments.

(b) Application of Mandatory Prepayments by Type of Loans. (i) Any amount required to be prepaid pursuant to Section 2.12(a) through 2.12(c) shall be applied to prepay outstanding Loans on a pro rata basis (in accordance with the respective outstanding principal amounts thereof), (ii) any amount required to be prepaid pursuant to Section 2.12(f), Section 2.12(h) and Section 2.12(i) shall be applied to prepay outstanding Loans in inverse order of maturity, commencing with the payment due on December 31, 2005 and (iii) any amount required to be prepaid pursuant to Sections 2.12(d), 2.12(e) and 2.12(g) shall be applied to reduce outstanding Loans due on March 31, 2006; provided, that in the event such prepayment event pursuant to such sections occurs (x) on or prior to March 31, 2004, then, one-half of the amount required to be prepaid shall be paid on March 31, 2004 and one-half of the amount required to be prepaid shall be paid on June 30, 2004; (y) after March 31, 2004 but prior to June 30, 2004, then, one-half of the amount required to be prepaid shall be paid on the date that the prepayment event occurs and one-half of the amount required to be prepaid shall be paid on June 30, 2004; and (z) on or after June 30, 2004, then, all of the amount required to be prepaid shall be paid on the date that the prepayment event occurs.

(c) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Any prepayment of the Loans shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.17(c).

2.14 Allocation of Certain Payments and Proceeds. If an Event of Default shall have occurred and not otherwise be waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Agents hereunder in respect of any of the Obligations, shall be applied by Agents in accordance with the application arrangements described in Section 6.5 of the Pledge and Security Agreement.

2.15 General Provisions Regarding Payments.

(a) All payments by the Borrower of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at the Administrative Agent's Principal Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by the Borrower on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan shall include payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest before application to principal.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share, giving effect to any adjustment from Pro Rata Shares on and after the Closing Date, of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period", whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

(f) The Borrower hereby authorizes Administrative Agent to charge its accounts with Administrative Agent in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose).

(g) Administrative Agent shall deem any payment by or on behalf of the Borrower hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) on or before the due date to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to the Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment

to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.8 from the date such amount was due and payable until the date such amount is paid in full.

2.16 Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the **"Aggregate Amounts Due"** to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall notify Administrative Agent and each other Lender of the receipt of such payment and apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of a Credit Party or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be promptly returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by the Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.17 Making or Maintaining Eurodollar Rate Loans.

(a) Inability to Determine Applicable Interest Rate . In the event that Administrative Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted Eurodollar Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and each Lender of such determination, whereupon no Loans may be converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies the Borrower and Lenders (by telefacsimile or by telephonic notice confirmed in writing) that the circumstances giving rise to such notice no longer exist, and any Conversion/Continuation Notice given by the Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be, in the case of a Conversion Notice, rescinded by the Borrower.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with the Borrower and Administrative Agent) that the maintaining or continuation of its Eurodollar Rate Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an **"Affected Lender"** and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to the Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender and by telefacsimile or telephonic notice confirmed in writing). Thereafter the obligation of the Affected Lender to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Conversion/Continuation Notice, the Affected Lender shall continue such Loan as or convert such Loan to, as the case may be a Base Rate Loan, the Affected Lender's obligation to maintain its outstanding Eurodollar Rate Loans (the **"Affected Loans"**) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by the Borrower pursuant to a Conversion/Continuation Notice, the Borrower shall have the option, subject to the provisions of Section 2.17(c), to rescind such Conversion/Continuation Notice as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender by telefacsimile or by telephonic notice confirmed in writing). Except as provided in the immediately preceding sentence, nothing in this Section 2.17(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. The Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid by such Lender to lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain (i) if for any reason as a result of the Borrower's action or omission a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment or any conversion of any of its Eurodollar Rate Loans occurs on a date prior to the last day of an

Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by the Borrower or as a consequence of any default by the Borrower in the repayment of its Eurodollar Rate Loans when required by the terms thereof.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.17 and under Section 2.18 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted Eurodollar Rate in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.17 and under Section 2.18.

2.18 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.19 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or Governmental Authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law): subjects such Lender (or its applicable lending office) to any additional Tax (other than any Tax on the overall net income of such Lender) with respect to this Agreement or any of its obligations hereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder or thereunder; imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of Adjusted Eurodollar Rate); or imposes any other condition (other than with respect to a Tax

matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or under any other Credit Document or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Eurodollar Rate Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, the Borrower shall promptly pay to such Lender, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder or under any other Credit Document. Such Lender shall deliver to the Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.18(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined that the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans, or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by the Borrower from such Lender of the statement referred to in the next sentence, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction. Such Lender shall deliver to the Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.18(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Limitation on Retroactive Effect. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.18 shall not constitute a waiver of such Lender's right to demand such compensation; provided, however, that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.18 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the change giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that if the change giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effective thereof.

2.19 Taxes; Withholding, etc.

(a) Payments to Be Free and Clear. All sums payable by any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender) imposed, levied, collected, withheld or assessed by or within the United States of America or any political subdivision in or of the United States of America or any other jurisdiction from or to which a payment is made by or on behalf of any Credit Party or by any federation or organization of which the United States of America or any such jurisdiction is a member at the time of payment.

(b) Withholding of Taxes. If any Credit Party or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: the Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as the Borrower becomes aware of it; the Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and within thirty (30) days after paying any sum from which it is required by law to make any deduction or withholding, and within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, the Borrower shall deliver to Administrative Agent and the other affected parties evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority; provided, no such additional amount shall be required to be paid to any Lender under clause (iii) above except to the extent that any change after the date hereof (in the case of each Lender listed on the signature pages hereof on the Closing Date) or after the effective date of the Assignment Agreement pursuant to which such Lender became a Lender (in the case of each other Lender) in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect at the date hereof or at the date of such Assignment Agreement, in respect of payments to such Lender.

(c) Evidence of Exemption From U.S. Withholding Tax. Each Lender that is not a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a **"Non-US Lender"**) shall deliver (to the extent not previously delivered) to Administrative Agent for transmission to Borrower, on or prior to the Effective Date (in the case of each Lender listed on the signature pages hereof on the Effective Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of the Borrower or Administrative Agent (each in the reasonable exercise of its discretion), two original copies of Internal Revenue Service Form W-8BEN or W-

8ECI (or any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Borrower to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or if such Lender is not a "bank" or other Person described in Section 881(c)(3) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8BEN or W-8ECI pursuant to clause (i) above, a Certificate re Non-Bank Status together with two original copies of Internal Revenue Service Form W-8 (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Borrower to establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.19(c) hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to the Borrower two new original copies of Internal Revenue Service Form W-8BEN or W-8ECI, or a Certificate re Non-Bank Status and two original copies of Internal Revenue Service Form W-8, as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by the Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and the Borrower of its inability to deliver any such forms, certificates or other evidence. The Borrower shall not be required to pay any additional amount to any Non-US Lender under Section 2.19(b)(iii) if such Lender shall have failed to deliver the forms, certificates or other evidence referred to in the second sentence of this Section 2.19(c), or (2) to notify Administrative Agent and the Borrower of its inability to deliver any such forms, certificates or other evidence, as the case may be; provided, if such Lender shall have satisfied the requirements of the first sentence of this Section 2.19(c) on the Effective Date or on the date of the Assignment Agreement pursuant to which it became a Lender, as applicable, nothing in this last sentence of Section 2.19(c) shall relieve the Borrower of its obligation to pay any additional amounts pursuant to Section 2.18(a) in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described herein.

2.20 Obligation to Mitigate. Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.17, 2.18 or 2.19, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, (i) use reasonable efforts to maintain its Loans, including any Affected Loans, through another office of such Lender, or (ii) take such other

measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.17, 2.18 or 2.19 would be materially reduced and if, as determined by such Lender in its sole discretion, the maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.20 unless the Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described in clause (i) above. A certificate as to the amount of any such expenses payable by the Borrower pursuant to this Section 2.20 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

2.21 [Reserved].

2.22 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (i) any Lender (an **"Increased-Cost Lender"**) shall give notice to the Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.17, 2.18 or 2.19, the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and such Lender shall fail to withdraw such notice within five (5) Business Days after the Borrower's request for such withdrawal; or (ii) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a **"Non-Consenting Lender"**) whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender or Non-Consenting Lender (the **"Terminated Lender"**), the Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans, if any, in full to one or more Eligible Assignees (each a **"Replacement Lender"**) in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.9; (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.17(c), 2.18 or 2.19 or otherwise as if it were a prepayment; and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a "Lender" for purposes

hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

SECTION 3. CONDITIONS PRECEDENT

3.1 Conditions to Effectiveness. This Agreement shall become effective only upon the satisfaction of all of the following conditions precedent by December 31, 2002; provided, that if the following conditions have not been satisfied by December 31, 2002 solely as a result of the failure by Company to obtain all regulatory approvals required to consummate the Recapitalization Transactions or the Exchange Offer (including, without limitation, the SEC clearing the proxy statement regarding the Recapitalization Transactions for mailing and any extensions of the tender offer period as provided for in the Exchange Offer), then, the Second Amendment Effective Date shall automatically be extended for three successive thirty (30) calendar day periods; provided, further, that in no event shall the Second Amendment Effective Date extend beyond March 31, 2003:

(a) Execution. OpCo, Company, the Credit Parties, Lenders and Agents shall have executed this Agreement.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) if not previously delivered to the Administrative Agent, sufficient copies of each Organizational Document executed (original in the case of Bylaws) and delivered by each Credit Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, for each Lender and its counsel, each dated the Second Amendment Effective Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement, the Recapitalization Transaction and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Second Amendment Effective Date, certified as of the Second Amendment Effective Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) if not previously delivered to the Administrative Agent and to the extent available, a good standing certificate from the applicable Governmental Authority of each Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Second Amendment Effective Date; and (v) such other documents as Administrative Agent or Collateral Agent may reasonably request.

(c) Recapitalization Transactions. With respect to the consummation of the Recapitalization Transactions, (i) all conditions to the Recapitalization Transactions set forth in the Combination Agreement and related documents shall have been satisfied or the fulfillment of any such conditions shall have been waived with the consent of the Administrative Agent (other than any waiver with respect to the minimum amount of Senior Notes to be retired or tendered); and (ii) the Recapitalization Transactions shall have become effective in accordance with the terms of the Combination Agreement and related documents. Company shall deliver to the Administrative Agent copies of all documents, agreements, opinions and certificates executed in connection with the Recapitalization Transactions.

(d) Exchange Offer. With respect to the Exchange Offer, (i) all conditions to the Exchange Offer set forth in the Exchange Offer Documents and related documents shall have been satisfied or the fulfillment of any such conditions shall have been waived with the consent of the Administrative Agent; (ii) on or prior to the date hereof, no less than $110,000,000 of outstanding Senior Notes shall have been retired or shall have been tendered for retirement pursuant to the terms of the Exchange Offer Documents; and (iii) the Exchange Offer shall have become effective in accordance with the terms of the Exchange Offer Documents and related documents. Company shall deliver to the Administrative Agent copies of all documents, agreements, opinions and certificates executed in connection with the Exchange Offer.

(e) Convertible Notes. On or prior to the Second Amendment Effective Date, (i) Company shall have received the gross proceeds from the issuance of the Convertible Notes in an aggregate amount in cash of not less than $30,000,000; (ii) all conditions to the issuance of the Convertible Notes set forth in the Convertible Note Documents shall have been satisfied or the fulfillment of any such conditions shall have been waived with the consent of the Administrative Agent; and (iii) Company shall have delivered to Administrative Agent complete, correct and conformed copies of the Convertible Note Documents which shall include terms reasonable and customary for loans and securities of such type, as mutually agreed upon between Company and Administrative Agent. Company shall deliver to the Administrative Agent copies of all documents, agreements, opinions and certificates executed in connection with the issuance of the Convertible Notes.

(f) Organizational and Capital Structure. The organizational structure and capital structure of Company and its Subsidiaries after giving effect to the Recapitalization Transactions shall be as set forth on Schedule 4.2.

(g) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Credit Documents and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(h) Intercreditor Agreement. Administrative Agent, Collateral Agent and Convertible Note Agent shall have entered into the Intercreditor Agreement and Administrative Agent and Collateral Agent shall be satisfied with the terms and conditions of the security documents entered into between Convertible Note Agent, Company and the Credit Parties in connection with Convertible Note Agent's second priority security interest in the Collateral.

(i) Amendment Fee. Administrative Agent shall have received, for distribution to all Lenders, an amendment fee equal to 1.00% of such Lenders' outstanding Loans immediately prior to the Second Amendment Effective Date and after taking into effect the principal repayment contemplated by Section 3.1(j) below.

(j) Prepayment of Existing Loans. The Administrative Agent shall have received from Company for distribution to the Lenders a prepayment in the amount of $7,500,000, plus any matching principal payment resulting from payments of interest on Senior Notes due December 1, 2002, such amount to be applied to prepay outstanding Loans on a pro rata basis.

(k) Collateral. Except as set forth in Section 5.15(a), Company shall have (i) delivered all documents to the Collateral Agent on terms and conditions reasonably satisfactory to the Agents and (ii) made all filings necessary or advisable in order to grant to the Collateral Agent for the benefit of the Lenders a First Priority Lien in all assets located in the United States that have been acquired by Company directly or indirectly in connection with the Recapitalization Transactions, with, in each case of (i) and (ii), any exceptions that the Collateral Agent determines are reasonable; provided that in the case of any exceptions, Company shall in any event fully comply with this Section 3.1(k) within ten (10) Business Days following the Second Amendment Effective Date.

(l) Second Amendment Effective Date Financial Plan. The Administrative Agent shall have received from Company for distribution to the Lenders the final Second Amendment Effective Date Financial Plan.

(m) Officer's Certificate. Administrative Agent and Lenders shall have received from Company an executed Second Amendment Effective Date Certificate from an Authorized Officer certifying (i) the amount of cash on Pihana's balance sheet after giving effect to the Recapitalization Transactions; (ii) the total amount of fees paid or accrued on the Second Amendment Effective Date by Company in connection with the Recapitalization Transactions; (iii) the amount and details with respect to the cash paid to the holders of the Senior Notes in connection with the Exchange Offer; (iv) that after giving effect to the Recapitalization Transactions the representations and warranties set forth in Section 4 of this Agreement are true and correct in all material respects on and as of the Second Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true and correct in all material respects on and as of such earlier date; and (v) that after giving effect to the Recapitalization Transactions, as of the Second Amendment Effective Date, no event has occurred and is continuing that would constitute an Event of Default or a Default.

(n) Legal Opinion. Administrative Agent and Lenders shall have received originally executed copies of the favorable written opinions of Willkie, Farr & Gallagher, special counsel for the Credit Parties, and the General Counsel of Equinix, Inc., as to such matters as Administrative Agent may reasonably request, dated the Second Amendment Effective Date and otherwise in form and substance reasonably satisfactory to Administrative Agent.

(o) Other Fees. The Administrative Agent and Lenders shall have received all fees and other amounts due and payable pursuant to any Credit Document on or prior to the Second Amendment Effective Date, including, (i) the reasonable fees and expenses of Skadden, Arps, Slate, Meagher & Flom LLP, (ii) the reasonable fees and expenses of Ernst & Young Corporate Finance LLC and (iii) to the extent invoiced, reimbursement or other payment of all

reasonable out-of-pocket expenses required to be reimbursed or paid by Company hereunder or under any other Credit Document.

(p) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request. Each Lender, by delivering its signature page to this Agreement as of the Second Amendment Effective Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable, on or prior to the Second Amendment Effective Date.

3.2 Notices by Borrower. Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, the Borrower may give Administrative Agent telephonic notice by the required time of any conversion/continuation, as the case may be; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the applicable date of continuation/conversion. Neither Administrative Agent, nor any Lender shall incur any liability to any Credit Party in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of the Borrower or for otherwise acting in good faith.

SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Lenders and Agents to enter into this Agreement, each Credit Party represents and warrants to each Lender and Agents, on the Second Amendment Effective Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. Each of the Credit Parties (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

4.2 Capital Stock and Ownership. The Capital Stock of each of the Credit Parties has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which any of the Credit Parties, other than Company, is a party requiring, and there is no membership interest or other Capital Stock of any of the Credit Parties, other than Company, outstanding which upon conversion or exchange would require, the

issuance by any of the Credit Parties, other than Company, of any additional membership interests or other Capital Stock of any of the Credit Parties, other than Company, or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of any of the Credit Parties, other than Company. Schedule 4.2 correctly sets forth the ownership interest of the Credit Parties in their respective Subsidiaries as of the Second Amendment Effective Date and after giving effect to the Recapitalization Transactions.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not violate any provision of any law or any governmental rule or regulation applicable to any of the Credit Parties, any of the Organizational Documents of any of the Credit Parties, or any order, judgment or decree of any court or other agency of government binding on any of the Credit Parties; conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of any of the Credit Parties; result in or require the creation or imposition of any Lien upon any of the properties or assets of any of the Credit Parties (other than any Liens created under any of the Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of any of the Credit Parties, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

4.5 Governmental Consents. The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except as otherwise set forth on Schedule 4.5, and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, on or before the Effective Date.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.7 Second Amendment Effective Date Financial Statements. The Second Amendment Effective Date Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of

the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Second Amendment Effective Date, neither Company nor any of its Subsidiaries has any contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the Second Amendment Effective Date Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company and any of its Subsidiaries taken as a whole.

4.8 Projections. On and as of the Second Amendment Effective Date, the financial forecast of Company and its Subsidiaries delivered pursuant to Section 3.1(l) (the **"Second Amendment Effective Date Financial Plan"**) is based on good faith estimates and assumptions made by the management of Company; provided, the Second Amendment Effective Date Financial Plan is not to be viewed as representing facts and that actual results during the period or periods covered by the Second Amendment Effective Date Financial Plan may differ from Second Amendment Effective Date Financial Plan and that the differences may be material; provided further, as of the Second Amendment Effective Date, management of Company believed that the Second Amendment Effective Date Financial Plan was reasonable and attainable.

4.9 No Material Adverse Change. Since the Second Amendment Effective Date, no event or change has occurred that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect.

4.10 No Restricted Junior Payments. Since the Second Amendment Effective Date, none of the Credit Parties has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted pursuant to Section 6.4.

4.11 Adverse Proceedings, etc. There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. None of the Credit Parties is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.12 Payment of Taxes. Except as otherwise permitted under Section 5.3, all tax returns and reports of Company and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Company and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Company knows of no proposed tax assessment against Company or any of its Subsidiaries which is not being actively contested by Company or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other

appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 Properties

(a) Title. Each Credit Party has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Second Amendment Effective Date Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

(b) Real Estate. As of the Second Amendment Effective Date, Schedule 4.13 contains a true, accurate and complete list of (i) all Real Estate Assets, (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment and (iii) all basic rental lease payment obligations of the Company and its Subsidiaries with respect to their domestic IBX Facilities. Except as specified in Schedule 4.13, each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Company does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

4.14 Collateral

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(a) Attachment and Perfection. The execution and delivery of the Collateral Documents by Credit Parties, together with the actions taken on or prior to the date hereof, are effective to create in favor of Collateral Agent, on behalf of Secured Parties, as security for their respective Obligations, a valid and perfected First Priority Lien on all of the Collateral, and all filings and other actions necessary or desirable to perfect and maintain the perfection and First Priority status of such Liens have been duly made or taken and remain in full force and effect, other than (i) the actions required under federal law to register and record interests in intellectual property and (ii) the periodic filing of UCC continuation statements in respect of UCC financing statements filed by or on behalf of Collateral Agent.

(b) Governmental Approvals, Etc. No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (i) the pledge or grant by any Credit Party of the Liens purported to be created in favor of Collateral Agent pursuant to any of the Collateral Documents or (ii) the exercise by Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or

created pursuant to any of the Collateral Documents or created or provided for by applicable law), except for filings or recordings as may be required in connection with the disposition of any Investment Related Property, or by laws generally affecting the offering and sale of Securities.

(c) Filings. Except with respect to any Permitted Lien and such as may have been filed in favor of Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office.

(d) Disclosure. All information supplied to Collateral Agent by or on behalf of any Credit Party with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

(e) Cash and Cash Equivalents. Without limiting the generality to the foregoing, representation and warranties, each Credit Party represents and warrants that all of its Cash and Cash Equivalents shall be maintained in accounts in existence as of the Second Amendment Effective Date in which the Collateral Agent has a First Priority perfected security interest or such other accounts as may be pre-approved by the Collateral Agent, and in which Collateral Agent has a First Priority perfected security interest.

4.15 Environmental Matters. Neither any of the Credit Parties nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. None of the Credit Parties has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law. There are and, to each of the Credit Parties' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against any of the Credit Parties that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither any of the Credit Parties nor, to any Credit Party's knowledge, any predecessor of any of the Credit Parties has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of the Credit Parties' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to any of the Credit Parties or their respective Facilities relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

4.16 No Defaults. Except as set forth in Schedule 4.16, none of the Credit Parties is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with

the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

4.17 Material Contracts. (a) Schedule 4.17(a) contains a true, correct and complete list of all the Material Contracts in effect on the Effective Date, and except as described thereon, all such Material Contracts are in full force and effect and no material defaults currently exist thereunder or under any lease governing Leasehold Property.

(b) Each Credit Party owns or possesses all the patents, trademarks, service marks, trade names, copyrights and licenses, and all rights with respect to the foregoing, necessary for the conduct of its business as presently conducted without any known conflict with the rights of others. Schedule 4.17(b) accurately and completely lists all Intellectual Property owned or possessed by or licensed to such Credit Party.

4.18 Governmental Regulation. None of the Credit Parties is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. None of the Credit Parties is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.19 Margin Stock. None of the Credit Parties is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to such Credit Party will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

4.20 Employee Matters. None of the Credit Parties is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against any of the Credit Parties, or to the best knowledge of the Credit Parties, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any of the Credit Parties or to the best knowledge of the Credit Parties, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving any of the Credit Parties that could reasonably be expected to have a Material Adverse Effect, and (c) to the best knowledge of the Credit Parties, no union representation question existing with respect to the employees of any of the Credit Parties and, to the best knowledge of the Credit Parties, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

4.21 Employee Benefit Plans. Each of the Credit Parties and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA

and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified. No material liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any Trust established under Title IV of ERISA has been or is expected to be incurred by any of the Credit Parties or any of their ERISA Affiliates. No ERISA Event has occurred or is reasonably expected to occur. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any of the Credit Parties or any of their respective ERISA Affiliates. As of the most recent valuation date for any Pension Plan, the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), does not exceed $500,000. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Credit Parties and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA, does not exceed $1,500,000. Each of the Credit Parties and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

4.22 Solvency. Each Credit Party is and, upon the incurrence of any Obligation by such Credit Party on any date on which this representation and warranty is made, will be, Solvent.

4.23 Compliance with Statutes, etc. Each of the Credit Parties is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of Company or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.24 Disclosure. No representation or warranty of any Credit Party contained in any Credit Document or, except as set forth on Schedule 4.24, in any other documents, certificates or written statements furnished to Lenders by or on behalf of any Credit Party for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to each Credit Party, in the case of any document not furnished by any of them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by each Credit Party to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and

that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to any Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

4.25 Fees to Management in Connection with the Recapitalization Transactions.

None of Company nor any of its Subsidiaries has paid a special payment, fee or bonus to management which is contingent solely upon the consummation and completion of the Recapitalization Transactions.

SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that until payment in full of all Obligations each Credit Party shall perform, and shall cause each of its Subsidiaries to perform (or, in the case of i-STT Nation Ltd, shall use commercially reasonable efforts to cause i-STT Nation Ltd to perform), all covenants in this Section 5.

5.1 Financial Statements and Other Reports. Company will deliver to Administrative Agent and Lenders:

(a) Monthly Reports. As soon as available, and in any event within thirty (30) days after the end of each month ending after the Closing Date, (i) the financial statements and information set forth on Schedule 5.1(a)(i), (ii) a statement setting forth the location and amount of all Cash and Cash Equivalents of Company and its Subsidiaries, and (iii) a statement setting forth the location, amount and summary of transfers of all Cash and Cash Equivalents from the Singapore Subsidiaries to the Credit Parties and vice versa, in the form set forth on Schedule 5.1(a)(iii), together with Financial Officer Certification with respect thereto;

(b) Quarterly Financial Statements. As soon as available, and in any event within thirty (30) days after the end of the first three Fiscal Quarters of each Fiscal Year and within sixty (60) days after the end of the last Fiscal Quarter of each Fiscal Year, the financial statements and information set forth on Schedule 5.1(a)(i), together with (1) a Financial Officer Certification and a Narrative Report with respect thereto and (2) revised Schedules 4.1 and 4.2 (if necessary) reflecting all changes in the organizational structure and capital structure of Company and its Subsidiaries since the delivery of the last quarterly financial information, which revised Schedules 4.1 and 4.2 will be deemed to amend the then-existing Schedules 4.1 and 4.2 for all purposes under this Agreement;

(c) Annual Financial Statements. As soon as available, and in any event within sixty (60) days after the end of each Fiscal Year, (i) the financial statements and information set forth on Schedule 5.1(a)(i), together with a Financial Officer Certification and a Narrative Report with respect thereto; (ii) with respect to each consolidated financial statements

a report thereon of PricewaterhouseCoopers LLP or other independent certified public accountants of recognized national standing selected by Company, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries, as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) together with a written statement by such independent certified public accountants stating that their audit examination has included a review of the terms of Sections 6.6 and 6.7 the Credit Documents, whether, in connection therewith, any condition or event that constitutes a Default or an Event of Default under Section 6.6 or 6.7 has come to their attention and, if such a condition or event has come to their attention, specifying the nature and period of existence thereof, and that nothing has come to their attention that causes them to believe that the information contained in any Compliance Certificate is not correct or that the matters set forth in such Compliance Certificate are not stated in accordance with the terms hereof and (iii) revised Schedules 4.1 and 4.2 (if necessary) reflecting all changes in the organizational structure and capital structure of Company and its Subsidiaries since the delivery of the last quarterly financial information, which revised Schedules 4.1 and 4.2 will be deemed to amend the then-existing Schedules 4.1 and 4.2 for all purposes under this Agreement; provided, that Company and its Subsidiaries shall not change their organizational structure or state of organization, without the prior written consent of the Requisite Lenders.

(d) Compliance Certificate. Together with each delivery of financial statements of Company and its Subsidiaries pursuant to Sections 5.1(a), 5.1(b) and 5.1(c), a completed Compliance Certificate duly executed by an Authorized Officer;

(e) [Reserved];

(f) Statements of Reconciliation after Change in Accounting Principles . If, as a result of any change in accounting principles and policies from those used in the preparation of the Effective Date Financial Statements, the consolidated financial statements of Company and its Subsidiaries delivered pursuant to Section 5.1(b) or 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more a statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(g) SEC Reports. Promptly upon their becoming available, copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by Company to its security holders acting in such capacity or by any Subsidiary of Company to its security holders other than Company or another Subsidiary of Company, (ii) all regular and periodic reports (but not including, unless requested by Administrative Agent, routine reports regularly filed with the FCC and state commissions with jurisdiction over telecommunications matters) and all registration statements (other than on Form S-8 or a similar form) and

prospectuses, if any, filed by Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, and (iii) all press releases and other statements made available generally by Company or any of its Subsidiaries to the public concerning material developments in the business of Company or any of its Subsidiaries;

(h) Notice of Default. Promptly upon any officer of Company obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Company with respect thereto; (ii) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b); (iii) of any condition or event of a type required to be disclosed in a current report on Form 8-K of the Securities and Exchange Commission; or (iv) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(i) Notice of Litigation. Promptly upon any officer of Company obtaining knowledge of the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to Lenders, or any material development in any Adverse Proceeding that, in the case of either (i) or (ii) if adversely determined, could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby or any of the other Credit Documents, written notice thereof together with such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters;

(j) ERISA. Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Company, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and with reasonable promptness, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by Company, any of its Subsidiaries or any of their respective ERISA Affiliates with the Internal Revenue Service with respect to each Pension Plan; all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(k) Financial Plan. As soon as available and in any event no later than sixty (60) days following the beginning of each Fiscal Year, a consolidated plan and financial forecast for such Fiscal Year and the lesser of the next three (3) succeeding Fiscal Years and the period remaining through the Maturity Date (a "**Financial Plan**"), including a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Company and

its Subsidiaries for each such Fiscal Year, together with pro forma Compliance Certificates for each such Fiscal Year and an explanation of the assumptions on which such forecasts are based and forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for each month of each such Fiscal Year, together with an explanation of the assumptions on which such forecasts are based;

(l) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, commencing on December 31, 2001, a report in form and substance satisfactory to Administrative Agent and Collateral Agent outlining all material insurance coverage maintained as of the date of such report by Company and its Subsidiaries and all material insurance coverage planned to be maintained by Company and its Subsidiaries in the immediately succeeding Fiscal Year;

(m) Notice of Change in Board of Directors. With reasonable promptness, written notice of any change in the board of directors (or similar governing body) of Company or OpCo;

(n) Annual UCC Questionnaire. By the last day of each Fiscal Year, commencing on December 31, 2003, a completed UCC Questionnaire in form and substance satisfactory to Collateral Agent;

(o) Notice Regarding Material Contracts. Promptly, and in any event within ten (10) Business Days (i) after any Material Contract of Company or any of its Subsidiaries is terminated prior to its scheduled term or amended in a manner that is materially adverse to Company or such Subsidiary, as the case may be, or (ii) any new Material Contract is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to Administrative Agent (to the extent (1) such information is not disclosed or incorporated by reference in any filing with the Securities and Exchange Commission, and (2) such delivery is permitted by the terms of any such Material Contract, provided, no such prohibition on delivery shall be effective if it were bargained for by Company or its applicable Subsidiary with the intent of avoiding compliance with this Section 5.1(o)), and an explanation of any actions being taken with respect thereto;

(p) Environmental Reports and Audits. As soon as practicable following receipt thereof, copies of all environmental audits and reports with respect to environmental matters at any Facility or which relate to any environmental liabilities of Company or its Subsidiaries which, in any such case, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;

(q) Additional Reporting Requirements. Within thirty (30) days after the last day of each month, such information described on Schedule 5.1 for the month most recently ended.

(r) Notice of Certain Payments; Cash Balances. On the date any Credit Party makes a payment or series of related payments or reimbursements or series of related reimbursements to any Person or related group of Persons (other than to landlords under leases existing on the Effective Date or to a Credit Party or the Lenders pursuant to the terms of this

Agreement) or otherwise transfers Cash or Cash Equivalents, in any such case, in an aggregate amount equal to or greater than $10,000,000 per transfer or in a series of related transfers, Company shall give notice thereof to Lenders. Upon the request of any Agent at any time, Company shall provide detailed information regarding Company's and its Subsidiaries' Cash and Cash Equivalents, including, without limitation amounts and locations of such Cash and Cash Equivalents.

(s) Other Information. With reasonable promptness, such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent, Collateral Agent or any Lender.

5.2 Existence. Except as otherwise permitted under Section 6.9, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's board of directors (or similar governing body) shall determine in good faith that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3 Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and in the case of a charge or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income Tax return with any Person (other than Company or any of its Subsidiaries).

5.4 Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of any Credit Party and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, and each Credit Party shall defend any Collateral against all Persons at any time claiming an interest therein.

5.5 Insurance. Company will maintain or cause to be maintained, with financially sound and reputable insurers, such comprehensive general liability insurance, third party property damage insurance, business interruption insurance, workers' compensation and employer's liability insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may be

satisfactory to the Collateral Agent, but in any event not less than as shown on Schedule 5.5 hereto and made a part hereof, and in each case in such amounts (giving effect to self-insurance in amounts acceptable to the Collateral Agent), with such deductibles and limits, covering such risks and otherwise on such terms and conditions as shall be acceptable to the Collateral Agent. Without limiting the generality of the foregoing, Company will maintain or cause to be maintained: (a) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, (b) insurance with respect to property owned by third parties and maintained at IBX Facilities with such insurance companies, in such amounts, with such deductibles, and covering such risks as are acceptable to the Collateral Agent and Administrative Agent and (c) replacement value casualty insurance on an all-risks basis on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks and otherwise on such terms and conditions as are acceptable to the Collateral Agent; (d) with respect to each policy of insurance, a waiver of subrogation in favor of the Collateral Agent and the Lenders; and (e) policies of insurance that (i) insure the interests of the Collateral Agent and the Lenders and their respective Affiliates regardless of any breach of or violation by any Credit Party of any warranties, declarations or conditions contained therein, (ii) contain cross liability clauses, (iii) provide that the insurance shall be primary and without right of contribution from any other insurance which may be available to any of the Collateral Agent or Lenders, (iv) provide that the Collateral Agent and the Lenders have no responsibility, obligation or liability for premiums, commissions, assessments or calls in connection with such insurance. Each such policy of liability insurance shall name each of the Collateral Agent and the Lenders and their respective Affiliates, as additional insureds thereunder and in the case of each business interruption and casualty insurance policy, contain a standard lender's loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent, that names Collateral Agent, on behalf of Lenders, as the loss payee thereunder for any covered loss in excess of $500,000. Each such policy of insurance shall provide for at least thirty (30) days' prior written notice to Collateral Agent of any reduction of coverage or cancellation of such policy. On the Closing Date and within thirty (30) days prior to each anniversary of the policies of insurance required to be maintained pursuant to this Section 5.5, the Borrower shall deliver or cause to be delivered to the Collateral Agent (which shall promptly furnish a copy thereof to each of the Lenders) an insurance broker's opinion letter from the Borrower's independent insurance agent confirming that the insurance premiums with respect to the policies of insurance required to be maintained pursuant to this Section 5.5 have been paid, that such policies are in full force and effect, and that such policies meet the insurance requirements set forth in this Section 5.5. The Borrower shall also furnish or cause to be furnished to the Collateral Agent (which shall promptly furnish a copy or copies thereof to each of the Lenders) a certificate or certificates of insurance (i) evidencing that all the coverages required to be maintained pursuant to this Section 5.5 have been renewed and continue to be in full force and effect for such period as shall be then stipulated, (ii) specifying the insurers with whom the insurances are carried and (iii) containing such other certifications and undertakings as are customarily provided to Lenders, as reasonably requested by the Collateral Agent or any Lender.

5.6 Books and Records; Inspections; Lenders Meetings . (a) Each Credit Party will, and will cause each of its Subsidiaries and the San Jose Subsidiary to, keep proper books of

record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives, including, without limitation, third party industry consultants designated or engaged by any Lender or the Collateral Agent (or, after the occurrence and during the continuance of any Event of Default, any Lender) to visit and inspect any of the facilities of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, to audit their assets and equipment and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested. Company will either pay such authorized representative's or consultant's reasonable fees and expenses or reimburse such Lender or Collateral Agent with respect to such authorized representative's or consultant's reasonable costs and expenses. Company will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Agents and Lenders once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent.

(b) Credit Parties agree to cooperate with third party industry consultants engaged by Lenders or their representatives to analyze Company's business plan and at the election of Agents, either pay such consultant's reasonable fees and expenses or reimburse Lenders or such representative with respect to such consultant's reasonable costs and expenses.

5.7 Compliance with Laws. Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facility to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), noncompliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.8 Environmental

(a) Environmental Disclosure. Company will deliver to Administrative Agent and Lenders:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;

(ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws and any remedial action taken by Company or any other Person in response thereto, (B) any Hazardous Materials Activities the existence of which has a reasonable possibility of resulting in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, (C) any Environmental Claims that, individually or in the

aggregate, have a reasonable possibility of resulting in a Material Adverse Effect, and (D) Company's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) as soon as practicable following the sending or receipt thereof by Company or any of its Subsidiaries, a copy of any and all written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, have a reasonable possibility of giving rise to a Material Adverse Effect, (B) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (C) any request for information from any governmental agency that suggests such agency is investigating whether Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by Company or any of its Subsidiaries that could reasonably be expected to (i) expose Company or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (ii) affect the ability of Company or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by Company or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Company or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent or Collateral Agent in relation to any matters disclosed pursuant to this Section 5.8(a).

(b) Hazardous Materials Activities, Etc. Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.9 Subsidiaries. In the event that, after the Effective Date, any Person becomes a Subsidiary of Company or a first tier Foreign Subsidiary, Company shall promptly (i) deliver, or cause to be delivered to Collateral Agent certificates (accompanied by irrevocable undated stock powers, duly endorsed in blank and otherwise satisfactory in form and substance to Collateral Agent) representing the Capital Stock of such Subsidiary, which shall be pledged pursuant to the Pledge and Security Agreement and deliver, or cause to be delivered, to Collateral Agent such other additional agreements or instruments, each in form and substance, as may be necessary or

desirable to create in favor of Collateral Agent, for the benefit of the Secured Parties, a valid and perfected First Priority security interest in all of the Capital Stock of such Subsidiary, (ii) cause each such Domestic Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent and Collateral Agent a Counterpart Agreement duly executed by an Authorized Officer of such Domestic Subsidiary, and (iii) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as may be reasonably requested by any Agent. With respect to each such Subsidiary, Company shall promptly send to Administrative Agent and Collateral Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedule 4.1 with respect to all Subsidiaries of Company, and such written notice shall be deemed to supplement Schedule 4.1 for all purposes hereof.

5.10 Post Closing Covenants With Respect to Real Estate Assets . (a) Other than in respect to the San Jose Ground Lease, in the event that any Credit Party acquires a Material Real Estate Asset or a Real Estate Asset owned on the Closing Date becomes a Material Real Estate Asset and such interest has not otherwise been made subject to the Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Credit Party, contemporaneously with acquiring such Material Real Estate Asset or (other than San Jose Ground Lease) with such real estate asset becoming a Material Real Estate Asset, shall take all such actions and execute and deliver, or cause to be executed and delivered, all such mortgages, documents, instruments, agreements, opinions and certificates with respect to each such Material Real Estate Asset that Collateral Agent shall reasonably request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Material Real Estate Assets and the personal property located thereon. Notwithstanding any of the foregoing to the contrary, if a Credit Party acquires a Material Real Estate Asset pursuant to a Permitted Acquisition, such Credit Party shall take all such actions to comply with this Section 5.10 within thirty (30) days after such Credit Party has acquired such Material Real Estate Asset pursuant to a Permitted Acquisition.

(b) Company and its Subsidiaries shall at all times with respect to Leasehold Properties which are not Material Real Estate Assets, use reasonable commercial efforts to comply with Section 5.10 as though such Leasehold Properties were Material Real Estate Assets.

(c) In addition to the foregoing, Company and its Subsidiaries shall, at the request of Requisite Lenders, deliver, from time to time, to Administrative Agent such appraisals as are required by law or regulation of Real Estate Assets with respect to which Collateral Agent has been granted a Lien, such best efforts to include, where possible, best efforts to obtain a Landlord Agreement with the exception of paragraphs 4, 5 and 7 of Exhibit K where a landlord refuses to consent to a leasehold mortgage.

5.11 [Reserved].

5.12 Post Closing Covenants With Respect to Permitted Equipment Financing Collateral . Upon termination of all outstanding obligations of Company under any Permitted Equipment Financing, Company, contemporaneously with the repayment of such outstanding obligations, shall (i) terminate any and all Liens granted in connection with such Permitted Equipment Financing, (ii) be deemed to have granted to Collateral Agent, for the benefit of Secured Parties, a valid security interest and continuing lien on all of Company's right, title and interest in, to and under such Collateral, (iii) grant to the Collateral Agent, for the benefit of Secured Parties, a security interest and continuing lien on all of Company's right, title and interest in, to and under such Collateral, which shall be further evidenced by Company executing and delivering to the Collateral Agent a Confirmation of Grant, substantially in the form of Exhibit M attached hereto, and (iv) deliver to Collateral Agent duly executed UCC financing statements and all other instruments, notices, releases or certificates as Collateral Agent may reasonably request from time to time.

5.13 Further Assurances. At any time or from time to time upon the request of Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time (including, without limitation, the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, landlord's consents and estoppels, control agreements, stock powers, financing statements and other documents, the filing or recording of any of the foregoing, title insurance with respect to any of the foregoing that relates to any Real Estate Asset, and the delivery of stock certificates and other collateral with respect to which perfection is obtained by possession) to ensure that the Obligations are guarantied by the Guarantors and are secured by substantially all of the assets of Company, and its Subsidiaries (other than the Singapore Subsidiaries) and all of the outstanding Capital Stock of Company's Subsidiaries (other than the Singapore Subsidiaries).

5.14 Notice of Default Under Lease. Upon receipt of any notice of default under any lease for domestic Leasehold Property, Company shall immediately notify Collateral Agent thereof.

5.15 Certain Post Second Amendment Effective Date Obligations .

(a) Company shall take all such actions as set forth on Schedule 5.15(a) on terms and conditions reasonably satisfactory to the Collateral Agent in order to grant to the Collateral Agent for the benefit of the Lenders a First Priority Lien in all assets located in jurisdictions other than the United States that have been acquired by Company directly or indirectly in connection with the Recapitalization Transactions by the date which is the later of (i) March 31, 2003 and (ii) thirty (30) days following the Second Amendment Effective Date; provided, however, that this Section 5.15 shall not apply to the Singapore Subsidiaries or to any assets owned by the Singapore Subsidiaries; provided, further, however, that to the extent such documents necessary to grant a First Priority Lien (including leaseholds with respect to foreign Real Property Assets, but excluding bank accounts) require third-party consents (other than the parties to the Recapitalization Transactions), such obligations in this Section 5.15(a) shall be

subject to a best commercial efforts standard; provided, further, however, that with respect to the leasehold property located in Australia, such security interest shall secure the Loans in an amount not to exceed $5,000,000 until such time as the Collateral Agent reasonably determines that the value of such leasehold property exceeds $5,000,000.

(b) Company shall take all such actions as set forth on Schedule 5.15(b) on terms and conditions reasonably satisfactory to the Collateral Agent in order to grant to the Collateral Agent for the benefit of the Lenders a First Priority perfected security interest in all domestic Real Property Assets and bank accounts acquired by the Credit Parties pursuant to the Recapitalization Transactions by the date which is the later of (i) March 31, 2003 and (ii) thirty (30) days following the Second Amendment Effective Date; provided, however, that to the extent such documents necessary to grant a First Priority Lien (including leaseholds with respect to Real Property Assets, but excluding bank accounts) require third-party consents (other than the parties to the Recapitalization Transactions), such obligations in this Section 5.15(b) shall be subject to a best commercial efforts standard.

SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that until payment in full of all Obligations such Credit Party shall perform, and shall cause each of its Subsidiaries to perform (or in the case of i-STT Nation Ltd, shall use commercially reasonable efforts to cause i-STT Nation Ltd to perform), all covenants in this Section 6.

6.1 Indebtedness. No Credit Party shall, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations, including any Indebtedness under any Hedge Agreement with any Lender Counterparty;

(b) (x) Indebtedness of OpCo or any Subsidiary to Company or to OpCo or any other Subsidiary of Company that is a Domestic Subsidiary; provided, that all such Indebtedness shall be evidenced by promissory notes and all such notes shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement, all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the applicable promissory notes or an intercompany subordination agreement that in any such case, is reasonably satisfactory to Administrative Agent and the Collateral Agent, and any payment by any such Guarantor Subsidiary under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to Company or to any of its Subsidiaries for whose benefit such payment is made and (y) Indebtedness of any Singapore Subsidiaries to any other Singapore Subsidiaries;

(c) [Reserved];

(d) Indebtedness incurred by Company or any of its Subsidiaries arising from agreements providing for indemnification in connection with the Combination Agreement;

(e) Indebtedness which may be deemed to exist pursuant to any guaranties, letters of credit, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business of Company and its Subsidiaries;

(f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with Deposit Accounts;

(g) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Company and its Subsidiaries;

(h) Indebtedness described in Schedule 6.1 (including reimbursement obligations with respect to letters of credit listed in Schedule 6.1) and refinancings and extensions of any such Indebtedness if the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness refinanced or extended (A) does not include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended or refinanced, (B) does not exceed in principal amount the Indebtedness being extended or refinanced (except it may be increased by an amount to cover the fees and expenses, including consent fees, placement fees and prepayment premiums, relating to such refinancing) and (C) may not be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;

(i) Permitted Equipment Financings (exclusive of those Permitted Equipment Financings listed on Schedule 6.1); provided, that with respect to Permitted Equipment Financings that have occurred during the period beginning after the Effective Date through to and including the Second Amendment Effective Date, such Permitted Equipment Financings are listed on Schedule 6.1(i) attached hereto;

(j) the Senior Notes;

(k) [Reserved];

(l) debt acquired in connection with the Recapitalization Transactions and described on Schedule 6.1; and

(m) Indebtedness incurred by Company and its Subsidiaries pursuant to the Convertible Notes in an aggregate principal amount not to exceed $40,000,000 plus any additional amounts incurred as a result of the issuances of PIK Notes.

6.2 Liens. No Credit Party shall, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for Taxes not yet due or that are being contested in good faith by appropriate proceedings; provided adequate reserves with respect thereto are maintained on the books of the Credit Party as may be required with GAAP;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business for amounts not yet overdue or for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, deposits made in the ordinary course of business with utility companies, and Liens incurred or deposits made in the ordinary course of business to secure the performance of tenders, statutory or regulatory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by Company or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder entered into by it;

(h) Purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business as expressly permitted hereunder;

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

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other intellectual property rights granted by Company or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of Company or such Subsidiary;

(l) Liens described in Schedule 6.2 or on a title report delivered to Agents on or prior to the Effective Date and agreed to by the Lenders;

(m) Liens in favor of the trustee pursuant to Section 7.7 of the Senior Notes Indenture;

(n) Liens consisting of judgment or judicial attachment Liens with respect to judgments that do not constitute an Event of Default;

(o) Liens securing Permitted Equipment Financings; provided, any such Lien shall encumber only the assets financed with the proceeds of such Permitted Equipment Financings as contemplated by the definition of Permitted Equipment Financing;

(p) Liens incurred in connection with the purchase of shipping of goods or assets on the related assets and proceeds thereof in favor of the seller or shipper of such goods or assets;

(q) Liens on escrowed Cash representing a portion of the proceeds of permitted sales of assets by Company or a Subsidiary established to satisfy contingent post-closing obligations that it owes (including earn-outs, indemnities and working capital adjustments);

(r) Liens granted to the holders of the Convertible Notes on the Capital Stock and assets owned by the Singapore Subsidiaries; and

(s) Liens granted to the Convertible Note Agent for the benefit of the holders of the Convertible Notes, in order to secure Company's obligations under the Convertible Notes and granted pursuant to the Convertible Note Collateral Documents and subject to the terms and provisions of the Intercreditor Agreement.

6.3 No Further Negative Pledges. Except with respect to (i) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to a permitted Asset Sale, (ii) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (iii) restrictions set forth in the Convertible Note Documents, no Credit Party shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

6.4 Restricted Junior Payments; Restrictions on Payments to European Subsidiaries . (a) No Credit Party shall, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment except that (i) Company may make prepayments with respect to, or acquisitions of, the Senior Notes in connection with the Exchange Offer; provided, that the cash amount of any such prepayments and acquisitions in excess of $15,000,000 must be funded by (A) proceeds received by Company from additional capital infusions over and above the $30,000,000 received by Company in connection with the Convertible Notes and the Recapitalization Transactions, (B) excess cash provided by Pihana over the $23,000,000 minimum cash requirement on Pihana's balance sheet as set forth in the Combination Agreement or (C) a reduction of fees paid or accrued on the Second Amendment Effective Date by Company in connection with the Recapitalization Transactions based on the original estimate of such fees of $13,400,000, (ii) regularly scheduled payments of principal and interest (but not voluntary prepayments other than a voluntary prepayment made pursuant to a refinancing permitted under Section 6.1) in respect of (A) any remaining portion of the Senior Notes outstanding following the Exchange Offer, and (B) Permitted Equipment Financings in accordance with the terms of, and only to the extent required by, the indenture or other agreement pursuant to which such Indebtedness was issued or restructured or amended and (iii) regularly scheduled payments of non-cash interest, payable in PIK Notes in respect of the Convertible Notes in accordance with the terms of, and only to the extent required by, the Convertible Note Documents.

(b) Neither Company nor any Subsidiary shall, directly or indirectly, make any guaranty on behalf of, declare, order, pay, make, transfer or set apart any sum or assets of, for or constituting any contribution of capital or assets to, or payment to or on behalf of (i) any European Subsidiary; except that, (i) Company or any Subsidiary may make (A) de minimis payments to European Subsidiaries in order to allow such Subsidiaries to pay legal fees of local counsel, local taxes and statutory reporting or filing fees; and (B) European Subsidiaries may maintain cash balances in foreign bank accounts not to exceed US $20,000 (or the foreign currency equivalent thereof) in the aggregate.

6.5 Investments. Except as provided in Section 6.4(b), neither Company nor any Subsidiary shall, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except:

(a) Cash Equivalents;

(b) equity Investments owned as of the Second Amendment Effective Date in any Domestic Subsidiary and equity investments made in Domestic Subsidiaries after the Second Amendment Effective Date; provided, however, that until such time that the Collateral Agent has received a First Priority Lien on the bank accounts of Pihana Pacific, Inc. and Pihana Business Recovery, Inc., such equity investments shall be limited to the amount necessary to fund operating costs for such Subsidiaries in accordance with the Second Amendment Effective Date Financial Plan and in any event in an amount not to exceed $350,000 for such Subsidiaries in the aggregate;

(c) Investments (i) in accounts receivable arising and trade credit granted in the ordinary course of business and in any Securities received in satisfaction or partial

satisfaction thereof from financially troubled account debtors and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of Company and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 6.1(b);

(e) Consolidated Capital Expenditures permitted by Section 6.8;

(f) Investments in Singapore Subsidiaries in any Fiscal Quarter in an amount not to exceed the amount necessary to fund the sum of (A) capital expenditures permitted in such Fiscal Quarter pursuant to Section 6.8(b) and (B) to the extent negative, the "Operating Cash Flow" (as such term is defined in accordance with GAAP) for the Singapore Subsidiaries; provided; that to the extent the such Investments were made in order to fund negative "Operating Cash Flow", such Investments shall reduce the amount of Investments otherwise available to the Singapore Subsidiaries for capital expenditures for such Fiscal Year as specified in Section 6.8(b); provided, further, that prior to making any such Investments, Administrative Agent shall have received a Singapore Subsidiaries Investment Certificate from an Authorized Officer of Company (a copy of which Administrative Agent shall promptly provide to each Lender) certifying (i) that no Default or Event has occurred and is continuing and (ii) the proceeds of such Investments shall be made for the purposes of clauses (A) and (B) above;

(g) equity investments made in Foreign Subsidiaries (other than the European Subsidiaries and Singapore Subsidiaries) after the Second Amendment Effective Date; provided, however, that until such time that the Collateral Agent has received a First Priority Lien on the bank accounts of any Foreign Subsidiary, such equity investments shall be limited to the amount necessary to fund operating costs for such Foreign Subsidiary in accordance with the Second Amendment Effective Date Financial Plan and in any event in an amount not to exceed $200,000 for all Foreign Subsidiaries in the aggregate;

(h) Permitted Acquisitions entered into pursuant to the terms of Section 6.9(d); and

(i) the Recapitalization Transactions.

6.6 Stage 1 Financial Covenants. Minimum Cash and Cash Equivalents. During Stage 1, Company shall not permit aggregate Cash and Cash Equivalents of Company and its Subsidiaries as of the last day of each calendar month during Stage 1 to be less than the correlative amounts set forth on Schedule 6.6; provided, that for purposes of calculating the covenant set forth on Schedule 6.6, all amounts of Cash and Cash Equivalents held by the Singapore Subsidiaries shall be deducted from such calculation.

6.7 Stage 2 Financial Covenants. During Stage 2:

(a) Senior Leverage Ratio. Company shall not permit the Senior Leverage Ratio as of the last day of any Fiscal quarter during Stage 2 to exceed the correlative ratio indicated as set forth on Schedule 6.7(a).

(b) Total Leverage Ratio. Company shall not permit the Total Leverage Ratio as of the last day of any Fiscal Quarter during Stage 2 to exceed the correlative ratio indicated as set forth on Schedule 6.7(b).

(c) Interest Coverage Ratio. Company shall not permit the Interest Coverage Ratio as of the last day of any Fiscal Quarter during Stage 2 to be less than the correlative ratio indicated as set forth on Schedule 6.7(c).

(d) Pro Forma Debt Service Coverage Ratio. Company shall not at any time during the periods set forth on Schedule 6.7(d) permit the ratio of (i) Annualized Consolidated EBITDA (excluding restricted cash) to (ii) required consolidated pro forma amortization and principal payments and consolidated cash interest expense for the next four consecutive quarters to be less than the correlative ratios set forth on Schedule 6.7(d).

(e) Minimum Cash and Cash Equivalents. Company shall not permit aggregate Cash and Cash Equivalents of Company and its Subsidiaries as of the last day of each calendar month during Stage 2 to be less than the correlative amounts set forth on Schedule 6.7(e); provided, that for purposes of calculating the covenant set forth on Schedule 6.7(e), all amounts of Cash and Cash Equivalents held by the Singapore Subsidiaries shall be deducted from such calculation.

(f) Calculation on the Second Amendment Effective Date. Notwithstanding the foregoing set forth in Section 6.6 and 6.7, in the event that on the Second Amendment Effective Date an amount greater than $110,000,000 of Senior Notes are exchanged for Qualifying Equity and Cash, Administrative Agent is authorized by Lenders to make changes to the covenants set forth in Schedule 6.6 and each Schedule 6.7 to give effect to such increased amount of Senior Notes exchanged above $110,000,000 using the same methodology used to calculate the original covenant levels set forth in such Schedules, provided, Administrative Agent shall enter into an addendum with Company revising such Schedules.

(g) Calculation of Cash and Cash Equivalents. For purposes of determining compliance with (i) the minimum Cash and Cash Equivalents requirements of Section 6.6 and 6.7(e) and (ii) the maximum Cash and Cash Equivalents requirement of Section 6.18(c), the amount of any Cash and Cash Equivalents of Company which qualifies as "Restricted Cash" as such term is defined pursuant to GAAP shall be excluded; provided, that for purposes of Section 6.18(c), such "Restricted Cash" shall be limited to that Cash and Cash Equivalents securing lease agreements of I-STT listed on Schedule 6.1; provided, further, that the face amount of such Indebtedness is not increased above the amounts set forth on Schedule 6.1.

(h) Calculation of Financial Covenants In the Event STT Exercises the STT Additional Equity Option. In the event that Company received the proceeds from the STT

Additional Equity Option and the Maturity Date is extended to December 31, 2006 pursuant to Section 2.10, then Administrative Agent is authorized by Lenders to make changes to the covenants set forth in Schedule 6.6 and each Schedule 6.7 to give effect to the extension of the Maturity Date using the same methodology used to calculate the original covenant levels set forth in such Schedules, provided, Administrative Agent shall enter into an addendum with Company revising such Schedules.

6.8 Maximum Consolidated Capital Expenditures

(a) Consolidated Capital Expenditures. Company shall not and shall not permit its Subsidiaries (other than the Singapore Subsidiaries) to make or incur Consolidated Capital Expenditures, in any Fiscal Year indicated on Schedule 6.8(a), in an aggregate amount for Company and its Subsidiaries in excess of the corresponding amount set forth on Schedule 6.8(a) increased by an amount equal to the excess, if any, of such amount for the previous Fiscal Year over the actual amount of Consolidated Capital Expenditures for such previous Fiscal Year; provided, that Company and its Subsidiaries may incur Consolidated Capital Expenditures in excess of (i) those corresponding amounts set forth on Schedule 6.8(a) and (ii) any amount carried forward from the previous Fiscal Year to the current Fiscal Year (such excess, the "**Excess Consolidated Capital Expenditures**"), provided, further, that simultaneously with the incurrence of such Excess Consolidated Capital Expenditures, Borrower shall repay the Loans in accordance with Section 2.12(h).

(b) Capital Expenditures and Negative "Operating Cash Flow" of Singapore Subsidiaries. The Singapore Subsidiaries shall not make or incur capital expenditures, in any Fiscal Year indicated on Schedule 6.8(b) in excess of the corresponding amount set forth on Schedule 6.8(b) plus amounts funded pursuant to Permitted Equipment Financings for such Fiscal Year increased by an amount equal to the excess, if any, of the aggregate of such amount for any previous Fiscal Years over the actual amount of capital expenditures for such previous Fiscal Years (but in no event more than $2,000,000 per Fiscal Year); provided, that (i) to the extent the Singapore Subsidiaries make any expenditures in any Fiscal Quarter in order to fund negative "Operating Cash Flow", such expenditures shall reduce the amount otherwise available to the Singapore Subsidiaries for capital expenditures indicated on Schedule 6.8(b) for such Fiscal Year (such reduction to be made in any Fiscal Quarter), (ii) the aggregate capital expenditures made by such Singapore Subsidiaries during each Fiscal Quarter since the Second Amendment Effective Date in excess of the amounts projected for such Fiscal Quarter in the Second Amendment Effective Date Financial Plan shall not exceed $4,000,000, and (iii) in no event shall the aggregate amount of all such capital expenditures and all fundings of negative "Operating Cash Flow" made pursuant to this Section 6.8(b) exceed $19,859,000; provided, further, so long as Borrower prepays the Loans pursuant to Section 2.12(i), the amount of capital expenditures that the Singapore Subsidiaries are permitted to make or incur shall be increased by the amount of any Cash and Cash Equivalents held by the Singapore Subsidiaries in excess of the amount of Cash and Cash Equivalents permitted to be held by the Singapore Subsidiaries pursuant to Section 6.18(c).

6.9 Fundamental Changes; Disposition of Assets; Acquisitions . Neither Company nor any Subsidiary shall, enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Company may be merged with or into any other Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to any Subsidiary; provided, in the case of such a merger, a Subsidiary shall be the continuing or surviving Person;

(b) sales or other dispositions of assets which do not constitute Asset Sales;

(c) Asset Sales, the proceeds of which (valued at the principal amount thereof in the case of non-Cash proceeds consisting of notes or other debt Securities and valued at fair market value in the case of other non-Cash proceeds) (i) are less than $250,000 with respect to any single Asset Sale or series of related Asset Sales and (ii) when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, are less than $1,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Company (or similar governing body)), (2) no less than 85% thereof shall be paid in Cash, and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.12(a);

(d) Permitted Acquisitions; provided, that (y) the consideration for such Permitted Acquisitions shall be in the form of either Capital Stock or Cash and Cash Equivalents; provided, further, that, with respect to each Permitted Acquisition on the date that is the last day of the first full four Fiscal Quarter period ending after consummation of such Permitted Acquisition and each anniversary thereof (each, " **Measurement Date**") Company shall make a payment to Lenders in an amount, if any, equal to the amount by which cumulative negative Stand-Alone Cash Flow of such Permitted Acquisition together with the negative Stand-Alone Cash Flow of all other Permitted Acquisitions measured pursuant to this proviso on or prior to such date, exceeds $1,000,000; provided, further, that, on and after the first date of payment to the Lenders pursuant to this proviso, on each Measurement Date thereafter, Company shall pay an amount, if any, equal to cumulative negative Stand-Alone Cash Flow for all Permitted Acquisitions not measured through a prior Measurement Date.

(e) Investments made in accordance with Section 6.5;

(f) Company and its Subsidiaries may enter into the Recapitalization Transactions; and

(g) Company and its Subsidiaries may consummate the transactions contemplated by the Exchange Offer Documents.

6.10 Disposal of Subsidiary Interests. Except for any sale of 100% of the Capital Stock of any of its Subsidiaries made in compliance with the provisions of Section 6.9, and except for the Recapitalization Transactions no Credit Party shall directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law; or permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to Company or a wholly-owned Guarantor Subsidiary of Company (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

6.11 Sales and Lease-Backs. Except as set forth on Schedule 6.11 or in connection with a Permitted Equipment Financing, no Credit Party shall, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party has sold or transferred or is to sell or to transfer to any other Person (other than Company or any of its Subsidiaries), or intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Company or any of its Subsidiaries) in connection with such lease.

6.12 Sale and Discount of Receivables. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, sell with recourse, or discount or otherwise sell for less than the face value thereof, any of its notes or accounts receivable (it being understood that the restriction contained in this Section 6.12 shall not apply to any write-off of bad debt in the ordinary course of business consistent with prior practice); provided, that Company or its Subsidiaries may discount or sell without recourse Foreign Accounts Receivable for no less than 93% of its original face value.

6.13 Transactions with Shareholders and Affiliates. (a) No Credit Party shall, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 10% or more of any class of Capital Stock of Company or any of its Subsidiaries (including, without limitation, any holder of Convertible Notes who would be entitled to hold 10% or more of any class of Capital Stock of Company upon the conversion of such Convertible Notes to Qualifying Equity of Company) or with any Affiliate of Company or of any such holder, on terms that are less favorable to Company or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction between Company and any Subsidiary or between any of the Guarantor Subsidiaries or between any of the Singapore Subsidiaries; (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of Company and its Subsidiaries; (c) compensation arrangements entered into in the ordinary course of business for officers and other employees of Company and its Subsidiaries; (d) transactions described in Schedule 6.13; and (e) the Recapitalization Transactions.

(b) Each Credit Party will (i) maintain entity records and books of account separate from those of any other entity which is an Affiliate of such Credit Party; (ii) not commingle its funds or assets with those of any other entity which is an Affiliate of such Credit Party, and (iii) provide that its board of directors or other analogous governing body will hold all appropriate meetings to authorize and approve such Person's entity actions, which meetings will be separate from those of other Credit Parties.

(c) Notwithstanding any of the foregoing to the contrary, in no event shall Company or any of its Subsidiaries pay any management, consulting or similar fee to any of STT or its affiliates, Pihana or the Singapore Subsidiaries; provided, that Company and its Subsidiaries may make payments of transition services to STT Communications Ltd for an amount equal to the cost of such services plus 5%; provided, further, that the aggregate amount of such services shall not exceed $250,000 per annum.

6.14 Conduct of Business. From and after the Second Amendment Effective Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by such Credit Party on the Second Amendment Effective Date (after giving effect to the transactions contemplated by the Combination Agreement) and Complementary Businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

6.15 Permitted IBX Facilities. Company shall not, nor shall it permit any of its Subsidiaries to, build out, commence the construction of, operate or acquire a IBX Facility whether independently or by joint venture) other than Permitted IBX Facilities.

6.16 Amendments or Waivers of Certain Documents. No Credit Party shall, amend or otherwise change the terms of the Senior Notes (other than amendments made on or prior to the Second Amendment Effective Date in connection with the Exchange Offer and Recapitalization Transactions), the Convertible Notes or any of Convertible Note Documents, the Combination Agreement, any of the Exchange Offer Documents or any Permitted Equipment Financing, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions of such Indebtedness (or of any guaranty thereof), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Indebtedness (or a trustee or other representative on their behalf) which would be adverse to any Credit Party or Lenders. In addition, no Credit Party shall amend or otherwise change the terms of any lease with respect to any IBX Facilities if the effect of such amendment or change is to increase the financial obligations with respect to such lease in an aggregate amount in excess of $50,000 over the term of such lease.

Notwithstanding any of the foregoing to the contrary, the Lenders hereby consent to Company making a prepayment on that certain Master Loan and Security Agreement dated

March 30, 2001 (**"Wells Fargo Agreement"**) between Company and Wells Fargo Bank (**"Wells Fargo"**) on or after the Second Amendment Effective Date; provided, that any such prepayment to Wells Fargo shall not exceed 100% of the total amount owed to Wells Fargo under the Wells Fargo Agreement.

6.17 Fiscal Year. No Credit Party shall change its Fiscal Year-end from December 31.

6.18 Foreign Subsidiaries

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(a) No Credit Party shall at any time (x) provide any guaranty of any Indebtedness of any of the Singapore Subsidiaries or the European Subsidiaries, (y) be directly or indirectly liable for any Indebtedness of any of the Singapore Subsidiaries or the European Subsidiaries or (z) be directly or indirectly liable for any other Indebtedness which provides that the holder thereof may (upon notice, lapse of time or both) declare a default thereon (or cause such Indebtedness or the payment thereof to be accelerated, payable or subject to repurchase prior to its final scheduled maturity) upon the occurrence of a default with respect to any other Indebtedness that is Indebtedness of any of the Singapore Subsidiaries or the European Subsidiaries. Notwithstanding any of the foregoing to the contrary, a Credit Party may guaranty the Indebtedness securing lease agreements of I-STT listed on Schedule 6.1, provided that the face amount of such Indebtedness is not increased above the amounts set forth on Schedule 6.1.

(b) Company shall not create or suffer to exist any additional Foreign Subsidiary that was not in existence on the Second Amendment Effective Date other (i) than the Singapore Subsidiaries and other Foreign Subsidiaries acquired pursuant to the Recapitalization Transactions, (ii) Foreign Subsidiaries acquired in connection with Permitted Acquisitions, and (iii) Foreign Subsidiaries organized in a manner reasonably satisfactory in order to facilitate any reorganization of Pihana's Foreign Subsidiaries; provided, that with respect to Foreign Subsidiaries created pursuant to (ii) and (iii) above, simultaneous with the creation of such Foreign Subsidiaries, Company shall deliver all documents and make all filings necessary and on terms and conditions satisfactory to the Collateral Agent in order to provide to the Collateral Agent for the benefit of the Lenders a First Priority Lien on all of the assets of such Foreign Subsidiaries and in order for such Foreign Subsidiaries to provide a Guaranty of the Obligations.

(c) Notwithstanding any of the foregoing to the contrary, Company shall not permit any of its Singapore Subsidiaries to hold at any time an amount of Cash and Cash Equivalents greater than the amount equal to the amount necessary to fund capital expenditures permitted pursuant to Section 6.8(b) for the current Fiscal Quarter (without giving effect to the reduction for expenditures to fund "Operating Cash Flow" pursuant to Section 6.8(b)(i)) plus $50,000, (such amount, the **"Permitted Cash Amount"**); provided, that the aggregate amount of Cash and Cash Equivalents at Company's Singapore Subsidiaries may exceed the Permitted Cash Amount, if Borrower prepays or has prepaid the Loans pursuant to Section 2.12(i) in an amount equal to the difference between the aggregate amount of Cash and Cash Equivalents at Company's Singapore Subsidiaries, minus the Permitted Cash Amount.

6.19 Acquisition and Ownership of Assets by Company . Except to the extent contemplated under Section 6.4(a), Company shall not acquire or own any operating assets other

than (i) assets owned or acquired prior to the Effective Date, (ii) replacement assets, (iii) assets acquired with the proceeds of Permitted Equipment Financing and (iv) assets from a Subsidiary so long as such asset is not subject to a Lien under the Collateral Documents.

6.20 Company Subsidiaries. The Company shall not after the Second Amendment Effective Date (i) create any new Subsidiary or (ii) acquire any equity interest in any other entity, unless in each case, all equity interests in such Subsidiaries and all such other equity interests are subject to First Priority Liens in favor of the Collateral Agent for the benefit of Lenders.

SECTION 7. GUARANTY

7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the **"Guaranteed Obligations"**).

7.2 Contribution by Guarantors. Each Guarantor desires to allocate among themselves (collectively, the **"Contributing Guarantors"**), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a **"Funding Guarantor"**) under this Guaranty that exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in the amount of such other Contributing Guarantor's Fair Share Shortfall as of such date, with the result that all such contributions will cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to the ratio of the Fair Share Contribution Amount with respect to such Contributing Guarantor to the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Shortfall" means, with respect to a Contributing Guarantor as of any date of determination, the excess, if any, of the Fair Share of such Contributing Guarantor over the Aggregate Payments of such Contributing Guarantor. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this

Guaranty (including, without limitation, in respect of this Section 7.2), minus the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of the Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for the Borrower's becoming the subject of a case under the Bankruptcy code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against the Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations in Cash. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between the Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against the Borrower or any of such other guarantors and whether or not the Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality

of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor in Cash, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Hedge Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against the Borrower or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents or the Hedge Agreements; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than the indefeasible payment in full of the Guaranteed Obligations in Cash), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents or the Hedge Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents, any of the Hedge Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for

the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document, such Hedge Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or any of the Hedge Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Company or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which the Borrower or any Guarantor may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to proceed against the Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, proceed against or exhaust any security held from the Borrower, any such other guarantor or any other Person, proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of the Borrower or any other Person, or pursue any other remedy in the power of any Beneficiary whatsoever; any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations in Cash; any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, any rights to set-offs, recoupments and counterclaims, and promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, under the Hedge Agreements or under any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices

of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6 Guarantors' Rights of Subrogation, Contribution, etc . Until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against the Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against the Borrower with respect to the Guaranteed Obligations, any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against the Borrower, and any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full in Cash and all Letters of Credit shall have expired or been cancelled, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against the , to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full in Cash, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7 Subordination of Other Obligations. Any Indebtedness of any Borrower or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been finally and indefeasibly paid in

full in Cash. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9 Authority of Guarantors or Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or the Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10 Financial Condition of Borrower. Any Credit Extension may be made to the Borrower or continued from time to time, and any Hedge Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation or at the time such Hedge Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of the Borrower. Each Guarantor has adequate means to obtain information from the Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Credit Documents and the Hedge Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Beneficiary.

7.11 Bankruptcy, etc. So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against the Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(a) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve the Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(b) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise (whether by demand, settlement, litigation or otherwise), and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12 Notice of Events. As soon as any Guarantor obtains knowledge thereof, such Guarantor shall give Administrative Agent written notice of any condition or event which has resulted in a material adverse change in the financial conditions of any Guarantor or the Borrower or a breach of or noncompliance with any term, condition or covenant contained herein, any other Credit Document, any Hedge Agreement or any other document delivered pursuant hereto or thereto.

7.13 Discharge of Guaranty Upon Sale of Guarantor . If all of the Capital Stock of any Guarantor that is a Subsidiary of Company or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale; provided, as a condition precedent to such discharge and release, Administrative Agent shall have received evidence satisfactory to it that arrangements satisfactory to it have been made for delivery to Administrative Agent of the applicable Net Asset Sale Proceeds of such disposition pursuant to Section 2.12(a).

SECTION 8. EVENTS OF DEFAULT

8.1 Events of Default. If any one or more of the following conditions or events (each, an Event of Default) shall occur:

(a) Failure to Make Payments When Due. Failure by the Borrower to pay (i) any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise within five (5) days after the date due; or (ii) any interest on any Loan or any fee or any other amount due hereunder or under any of the other Credit Documents within five (5) days after the date due; or

(b) Default in Other Agreements. Failure of any Credit Party to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of $250,000 or more or with an aggregate principal amount of $1,000,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to any other material term of one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above or any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness; or (iii) breach or default by any Credit Party with respect to any other term of Permitted Equipment Financing beyond the grace period, if any, provided therefor, if the effect of such breach or default is to

cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in Section 2.4, Section 2.12(c), Section 5.1(h), Section 5.2 or Section 6 (provided, that with respect to Sections 6.6 and 6.7(e), such default shall continue for a period of five (5) Business Days); or failure to comply with any material term or condition governing insurance of Company required pursuant to Section 5.5 for a period of 15 days from the time of receipt of notice under the applicable insurance agreement;

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an officer of such Credit Party becoming aware of such default or (ii) receipt by the Borrower of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Company or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Company or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc.. (i) Company or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case,

under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Company or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Company or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Company or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process (excluding any judgment obtained in connection with the Wells Fargo Agreement) involving (i) in any individual case an amount in excess of $250,000 or (ii) in the aggregate at any time an amount in excess of $1,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance Company has acknowledged coverage) shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days (or in any event later than five days prior to the date of any proposed sale thereunder),; or

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(j) Employee Benefit Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $1,500,000 during the term hereof; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which exceeds $500,000; or

(k) Change of Control. A Change of Control shall occur;

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations in Cash, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in Cash in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or willful misconduct or the part of the Collateral Agent) purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, or (iii) any Credit Party shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further

liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party; or

(m) The Company or any Subsidiary is in default on any obligation to make base rental payments under at least one lease with respect to either (i) each of any three Leasehold Properties which are Permitted IBX Facilities or (ii) any Leasehold Properties which are designated as "San Jose IBX" and "Secaucus IBX", respectively, on Schedule 1.1(a).

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Company by Administrative Agent, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (i) the unpaid principal amount of and accrued interest on the Loans, and (ii) all other Obligations; (B) the Administrative Agent may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents; and (C) the Lenders and Agents may exercise all other remedies available under Applicable Law (or under the Credit Documents).

SECTION 9. AGENTS

9.1 Appointment of Agents.

(a) Appointment. Salomon Smith Barney Inc. is hereby appointed a Lead Arranger and a Book Runner. Citicorp USA, Inc. is hereby appointed Administrative Agent (for purposes of this Section 9, the terms "Administrative Agent" and "Agent" shall also include Citicorp in its capacity as Collateral Agent pursuant to the Collateral Documents) hereunder and under the other Credit Documents and each Lender hereby authorizes Administrative Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any of its Subsidiaries. Each of Lead Arranger and Book Runner, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, all the respective obligations of Salomon Smith Barney Inc., in its respective capacities as Lead Arranger and Book Runner, shall terminate (except as otherwise expressly set forth herein). Citicorp is hereby appointed as the Collateral Agent under the Pledge and Security Agreement and the other Collateral Documents and each Agent and each Lender hereby authorizes Citicorp to act as Collateral Agent for its benefit and for the benefit of the other Secured Parties hereunder and under the other Credit Documents and each Agent and each Lender hereby authorizes Collateral Agent to act as its agent in accordance with the terms hereof and the other Credit Documents. Each Lender further authorizes the Administrative Agent to be the agent in connection with the Guaranty.

(b) Authorization to Enter into Intercreditor Agreement. Each Lender hereby acknowledges that it has reviewed the terms and provisions of the Intercreditor Agreement to be entered into by and among Administrative Agent, Collateral Agent and Convertible Note Agent on the Second Amendment Effective Date and each Lender hereby authorizes Administrative Agent and Collateral Agent to enter into the Intercreditor Agreement on its behalf.

9.2 Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

9.3 General Immunity.

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(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any of Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in

accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be in-house or attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

9.4 Agents Entitled to Act as Lender . The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each Agent, in its individual capacity, shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent, in its individual capacity, and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust, financial advisory or other business with either Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from either Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

9.5 Lenders' Representations, Warranties and Acknowledgment . Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Company and its Subsidiaries in connection with the transactions contemplated herein and that it has made and shall continue to make its own appraisal of the creditworthiness of Company and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

9.6 Right to Indemnity . Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or arising out hereof or the other Credit Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional

indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence. For the avoidance of doubt, this Section 9.6 shall extend and apply to any Agent under the Existing Credit Agreement with respect to any time period prior to their resignation.

9.7 Successor Administrative Agent and Collateral Agent

(a) Successor Administrative Agent. Administrative Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and the Borrower, and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Borrower and Administrative Agent and signed by Requisite Lenders. Upon any such notice of resignation or any such removal, Requisite Lenders shall have the right, with the Borrower's consent (which shall not be unreasonably withheld or delayed and which shall not be required while a Default or Event of Default exists), to appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents.

(b) Successor Collateral Agent. Collateral Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Administrative Agent, Lenders and the Borrower, and Collateral Agent may be removed at any time with or without cause by an instrument or concurrent instruments in writing delivered to the Borrower, Collateral Agent and Administrative Agent and signed by Requisite Lenders. Upon any such notice of resignation or any such removal, Requisite Lenders shall have the right, upon five (5) Business Days' notice to the Administrative Agent, following receipt of the Borrower's consent (which shall not be unreasonable withheld or delayed and which shall not be required while an Event of Default exists), to appoint a successor Collateral Agent. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent and the retiring or removed Collateral Agent shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under the Credit Documents, and (ii) execute and deliver to such successor Collateral Agent such

amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents.

9.8 Collateral Documents and Guaranty

(a) Agents under Collateral Documents and Guaranty . Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, each of Administrative Agent and Collateral Agent, as applicable may execute any documents or instruments necessary to release any Lien encumbering any item of Collateral (i) that is the subject of (A) a sale or other disposition of assets (B) a Lien securing a Permitted Equipment Financing or (ii) to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented or release any Guarantor from the Guaranty pursuant to Section 7.13 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented; provided that in the case of clause (i)(B) above, such release of Lien shall only be effectuated by the delivery of a release, substantially in the form of Exhibit N attached hereto (with such additions and deletions thereto in form and substance satisfactory to the Collateral Agent), together with any other documents or instruments deemed reasonably necessary by the Collateral Agent, by the Collateral Agent to Company. No UCC filings may be made by Company with respect to the foregoing without the written consent of Collateral Agent.

(b) Right to Realize on Collateral and Enforce Guaranty . Anything contained in any of the Credit Documents to the contrary notwithstanding, each Credit Party, each Agent and each Lender hereby agree that no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent for the benefit of Secured Parties, in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale.

SECTION 10. MISCELLANEOUS

10.1 Notices . Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Lead Arranger, Book

Runner, Collateral Agent or Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent.

10.2 Expenses. Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly all the actual and reasonable costs and expenses of Agents and Lenders associated with the expenses of preparation of the Credit Documents and any consents, amendments, waivers or other modifications thereto; all the costs of furnishing all opinions by counsel for any Credit Party; the reasonable fees, expenses and disbursements of counsel to Agents (in each case including allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by any Credit Party; all the actual costs and reasonable expenses of creating, perfecting, maintaining and terminating Liens in favor of Collateral Agent, for the benefit of Secured Parties pursuant hereto, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to each Agent and of counsel providing any opinions that any Agent or Requisite Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; all the actual costs and reasonable fees, expenses and disbursements of any auditors, accountants, consultants or appraisers; all the actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Administrative Agent or Collateral Agent and their respective counsel) in connection with the custody or preservation of any of the Collateral of the perfection of the Liens thereon; all other actual and reasonable costs and expenses incurred by each Agent in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and after the occurrence of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

10.3 Indemnity. In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender and their respective Affiliates and each of their and their

respective Affiliates' officers, partners, directors, trustees, employees and agents (each, an "Indemnitee"), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee, as determined by a court of competent jurisdiction in a final, non-appealable judgment order or decree. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, the Letters of Credit and participations therein and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Credit Document, irrespective of whether or not such Lender shall have made any demand hereunder or the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder or under any other Credit Documents shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. Each Credit Party hereby further grants to Administrative Agent and each Lender a security interest in all Deposit Accounts maintained with Administrative Agent or such Lender as security for the Obligations.

10.5 Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee payable hereunder;

(iv) extend the time for payment of any such interest or fees;

(v) reduce the principal amount of any Loan;

(vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(c) or Section 10.6(a);

(vii) amend the definition of **"Requisite Lenders"** or **"Pro Rata Share"**; provided, with the consent of Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of **"Requisite Lenders"** or **"Pro Rata Share"** on substantially the same basis as the Term Loans are included on the Second Amendment Effective Date;

(viii) (A) release or otherwise subordinate all or substantially all of the Collateral or all or substantially all of the Guarantors (or Company alone) from the Guaranty except as expressly provided in the Credit Documents or (B) otherwise make an amendment or waiver which changes the order of priority of payments among Lenders; or

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall amend, modify, terminate or waive any provision of Section 9 or Section 10 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

10.6 Successors and Assigns; Participations

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any

interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders.

(b) Register. The Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Loans listed therein for all purposes hereof, and no assignment or transfer of any such Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(e). Prior to such recordation, all amounts owed with respect to the applicable Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Loans owing to it, Note or Notes held by it, or other Obligation:

(i) to any Person meeting the criteria of clause (i) of the definition of the term of "Eligible Assignee" upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term of "Eligible Assignee" and to any such Person (except in the case of assignments made by or to another Lender), consented to by Borrower and Administrative Agent (such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Borrower, required at any time an Event of Default shall have occurred and then be continuing; provided that, in any event, notice of such assignment shall be given promptly to Borrower if its consent is not otherwise required); provided, further each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than $1,000,000 (or such lesser amount as may be agreed to by Borrower and Administrative Agent or as shall constitute the aggregate amount of the Obligations of the assigning Lender).

(d) Mechanics. The assigning Lender and the assignee thereof shall execute and deliver to Administrative Agent an Assignment Agreement, together with (i) a processing and recordation fee of $2,000 in the case of all assignments (except that only one fee shall be payable in the case of contemporaneous assignments to Related Funds), and (ii) such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver to Administrative Agent pursuant to Section 2.19(c).

(e) Notice of Assignment. Upon its receipt of a duly executed and completed Assignment Agreement, together with the processing and recordation fee referred to in Section 10.6(d) (and any forms, certificates or other evidence required by this Agreement in connection

therewith), Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to Borrower and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that it is an Eligible Assignee; it has experience and expertise in the making of or investing in loans such as the Loans; and it will make or invest in, as the case may be, its Loans for its own account in the ordinary course of its business and without a present view to distribution of such Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Loans or any interests therein shall at all times remain within its exclusive control).

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the "Effective Date" specified in the applicable Assignment Agreement: the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a "Lender" for all purposes hereof; the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Credit Documents to the contrary notwithstanding, (i) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder; and (ii) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the outstanding Loans of the assignee and/or the assigning Lender.

(h) Participations. Each Lender shall have the right at any time to sell one or more participations to any Person (other than Company, any of its Subsidiaries or any of its Affiliates) in all or any part of its Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment modification or waiver that would (i) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default shall not constitute a change in the

terms of such participation, and that an increase in any Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (iii) release or subordinate all or substantially all of the Collateral under the Collateral Documents or the Guarantors (except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating. All amounts payable by any Credit Party hereunder, including amounts payable to such Lender pursuant to Section 2.17(c), 2.18 or 2.19, shall be determined as if such Lender had not sold such participation. Each Credit Party and each Lender hereby acknowledge and agree that, solely for purposes of Sections 2.16 and 10.4, any participation will give rise to a direct obligation of each Credit Party to the participant and the participant shall be considered to be a "Lender."

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, (i) any Lender may assign and pledge all or any portion of its Loans, the other Obligations owed to such Lender, and its Notes, if any, to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to any Federal Reserve Bank or as collateral security for any loan or other financing transaction as in or in connection with any securitization or similar transaction, and this Section 10.6 shall not apply to any such pledge or assignment of a security interest or other transaction described herein; provided, (x) no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, (y) in no event shall the applicable Federal Reserve Bank or trustee or other financing party be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder and (z) any transfer of the rights and obligations of a "Lender" hereunder to any Person upon the foreclosure of any pledge or security interest referred to in this Section 10.6(i) may only be made pursuant to the provisions of Sections 10.6(c) through (e) governing assignments of interests in the Loans.

10.7. Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.17(c), 2.18, 2.19, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.16 and 9.6 shall survive the payment of the Loans.

10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are

cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Hedge Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Collateral Agent, Administrative Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause (whether by demand, settlement, litigation or otherwise), then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or any Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12 Entire Agreement. This Agreement (together with the Exhibits hereto, the Schedules hereto and the other agreements, documents and instruments delivered in connection herewith) and the Credit Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties or any of them with respect to the subject matter hereof.

10.13 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising hereunder and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

10.14 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.15 Acknowledgment and Consent. Each of Company and the Guarantors have (i) guaranteed the Obligations and (ii) created Liens in favor of Lenders on certain Collateral to secure their obligations under this Agreement and the Collateral Documents. Each of Company and the Guarantors are collectively referred to herein as the **"Credit Support Parties"**, and the Collateral Documents are collectively referred to herein as the **"Credit Support Documents"**. Each Credit Support Party hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents to the amendment of the Existing Credit Agreement effected pursuant to this Agreement. Each Credit Support Party hereby confirms that each Credit Support Document to which it is a party or otherwise bound and all Collateral encumbered thereby will continue to guarantee or secure, as the case may be, to the fullest extent possible in accordance with the Credit Support Documents the payment and performance of all "Obligations" under this Agreement and each of the Credit Support Documents, as the case may be (in each case as such terms are defined in the applicable Credit Support Document), including without limitation the payment and performance of all such "Obligations" under this Agreement and each of the Credit Support Documents, as the case may be, in respect of the Obligations of Company now or hereafter existing under or in respect of the Existing Credit Agreement, as amended hereby and hereby pledges and assigns to the Collateral Agent, and grants to the Collateral Agent a continuing lien on and security interest in and to, all Collateral as collateral security for the prompt payment and performance in full when due of the "Obligations" under this Agreement and each of the Credit Support Documents to which it is a party (whether at stated maturity, by acceleration or otherwise). Each Credit Support Party acknowledges and agrees that any of the Credit Support Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Agreement. Each Credit Support Party represents and warrants that all representations and warranties contained in this Agreement and the Credit Support Documents to which it is a party or otherwise bound are true and correct in all material respects on and as of the Second Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case they were true and correct in all material respects on and as of such earlier date. Each Credit Support Party acknowledges and agrees that (i) notwithstanding the conditions to effectiveness set forth in this Agreement, such Credit Support Party is not required by the terms of the Existing Credit Agreement or any other Credit Document to consent to the amendments to the Existing Credit Agreement effected pursuant to this Agreement and (ii) nothing in this Agreement or any other Credit Document shall be deemed to require the consent of such Credit Support Party to any future amendments to this Agreement.

10.16 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING SECTION 5-1401, SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

10.17 CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY CREDIT PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS,

MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; AGREES THAT SERVICE AS PROVIDED IN CLAUSE (c) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND AGREES AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

10.18 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.17 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS

MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.19 Confidentiality. Each Lender shall hold all non-public information obtained pursuant to the requirements hereof and sufficiently identified to such Lender as being non-public which has been identified as confidential by Borrower in accordance with such Lender's customary procedures for handling confidential information of this nature and in accordance with prudent lending or investing practices, it being understood and agreed by each Borrower that in any event a Lender may make disclosures to Affiliates of such Lender (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.18), disclosures reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Loans and other Obligations or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) in Hedge Agreements (provided, such counterparties and advisors are advised of and agree to be bound by the provisions of this Section 10.18) or disclosures required or requested by any governmental agency or representative thereof or by the NAIC or pursuant to legal process; provided, unless specifically prohibited by applicable law or court order, each Lender shall make reasonable efforts to notify Borrower of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such governmental agency) for disclosure of any such non-public information prior to disclosure of such information; provided, further, that in no event shall any Lender be obligated or required to return any materials furnished by Company or any of its Subsidiaries; and provided, further, that notwithstanding the foregoing, each Lender and its Affiliates shall have the right to (i) list the name and logo of Borrower and the Guarantors, as provided by Borrower and the Guarantors from time to time, and describe the transaction that is the subject of this Agreement in their marketing materials and (ii) post such information, including, without limitation, a customary "tombstone", on its web site.

10.20 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement (which for the avoidance of doubt shall include any rate of interest under the Existing Credit Agreement) at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent, for the account of the Lenders, an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the

foregoing, it is the intention of Lenders and each Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower.

10.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.22 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof.

10.23 General Release. In consideration of the Agent's and Lenders' execution of this Agreement, each Credit Party unconditionally and irrevocably acquits and fully and forever releases and discharges each Lender, and Agent and all their respective affiliates, partners, subsidiaries, officers, employees, agents, attorneys, principals, directors and shareholders of such Persons, and their respective heirs, legal representatives, successors and assigns (collectively, the **"Releasees"**) from any and all claims, demands, causes of action, obligations, remedies, suits, damages and liabilities of any nature whatsoever, whether now known, suspected or claimed, whether arising under common law, in equity or under statute, which such Credit Party ever had or now has against any of the Releasees and which may have arisen at any time prior to the date hereof and which were in any manner related to the Existing Credit Agreement, this Agreement, any other Credit Document now or hereafter in existence or related documents, instruments or agreements or the enforcement or attempted or threatened enforcement by any of the Releasees of any of their respective rights, remedies or recourse related thereto (collectively, the **"Released Claims"**). Each Credit Party covenants and agrees never to commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against any of the Releasees any action or other proceeding based upon any of the Released Claims. Notwithstanding the foregoing, in no event shall the foregoing be interpreted, construed or otherwise deemed as an admission or suggestion by the Agents and Lenders of any wrong doing or liability owed to Company, any Credit Party or any other Person. For the avoidance of doubt, this Section 10.23 shall extend and apply to any Agent under the Existing Credit Agreement with respect to any time period prior to their resignation.

10.24 Amendment and Restatement. This Agreement is an amendment and restatement of the Existing Credit Agreement, and, as such, all terms and provisions supersede in their entirety the Existing Credit Agreement. All other Collateral Documents previously delivered shall continue to secure the Obligations as herein defined, and shall be in full force and effect as amended and restated by this Agreement and the other Credit Documents. The Credit Parties by executing this Agreement hereby reaffirm all of the Obligations under the Existing Credit Agreement and the other Credit Documents, as amended hereby.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EQUINIX OPERATING CO., INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EQUINIX EUROPE, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EQUINIX – DC, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EQUINIX CAYMAN ISLANDS HOLDINGS

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: President

EQUINIX DUTCH HOLDINGS N.V.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: President

EQUINIX NETHERLANDS B.V.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Managing Director

EQUINIX FRANCE SARL

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Managing Director

EQUINIX GERMANY GMBH

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Managing Director

EQUINIX UK LIMITED

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Director

EQUINIX ASIA HQ PTE LTD

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Director

PIHANA PACIFIC, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

PIHANA PACIFIC BUSINESS RECOVERY, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

PIHANA PACIFIC BUSINESS RECOVERY HONG KONG LIMITED

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Representative Director

PIHANA PACIFIC AUSTRALIA PTY LIMITED

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Representative Director

PIHANA PACIFIC JAPAN KK

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Representative Director

PIHANA PACIFIC HONG KONG LIMITED

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Representative Director

EAGLE ACQUISITION CORP 2A

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EAGLE ACQUISITION CORP 1A

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EAGLE ACQUISITION CORP 1B

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

SALOMON SMITH BARNEY INC.,
as Lead Arranger and Book Runner

By: /s/ CARLTON B. KLEIN

Managing Director

CITICORP USA, INC.,
as Administrative Agent, Collateral Agent and a Lender

By: /s/ MICHAEL C. BECKER

Name: Michael C. Becker
Title: Director

CIT LENDING SERVICES CORPORATION,
as a Lender

By: /s/ MICHAEL V. MONAHAN

Name: Michael V. Monahan
Title: Vice President

LT HOLDCO I, LLC
as a Lender

By: /s/ MICHAEL GALLAGHER

Name: Michael Gallagher
Title: Vice President

BANK OF TOKYO-MITSUBISHI TRUST COMPANY,
as a Lender

By: /s/ TOD ANGUS

Name: Tod Angus
Title: Authorized Signatory

THE BANK OF NOVA SCOTIA,
as a Lender

By: /s/ STEPHEN C. LEVI

Name: Stephen C. Levi
Title: Director

THE JPMORGAN CHASE BANK
(formely THE CHASE MANHATTAN BANK),
as a Lender

By: /s/ JOHN P. MCDONAGH

Name: John P. McDonagh
Title: Managing Director

COMERICA BANK, CALIFORNIA,
as a Lender

By: /s/ KENNETH W. LEDEIT

Name: Kenneth W. LeDeit
Title: First Vice President

ISTAR FINANCIAL, INC., as a Lender

By: /s/ JAY S. SUGARMAN

Name: Jay S. Sugarman
Title: Chairman and CEO

Exhibit 10.60

GOVERNANCE AGREEMENT

BY AND AMONG

EQUINIX, INC.,

STT COMMUNICATIONS LTD.,

i-STT INVESTMENTS PTE. LTD.,

AND

THE PIHANA STOCKHOLDERS NAMED HEREIN

Dated as of

December 31, 2002

GOVERNANCE AGREEMENT

GOVERNANCE AGREEMENT, dated as of December 31, 2002 (the "Agreement"), by and among Equinix, Inc., a Delaware corporation ("Parent"), STT Communications Ltd., a corporation organized under the laws of the Republic of Singapore ("STT Communications"), i-STT Investments Pte. Ltd., a corporation organized under the laws of the Republic of Singapore and a wholly owned subsidiary of STT Communications ("i-STT Investments") and certain stockholders, named in the signature pages to this Agreement, of Pihana Pacific, Inc., a Delaware corporation ("Pihana"), as comprised immediately before the closing of the Combination Agreement (as defined below) ("Pihana Stockholders"). STT Communications, i-STT Investments and Pihana Stockholders are sometimes referred to herein as the "Stockholders."

WHEREAS, Parent, STT Communications, and Pihana have entered into that certain Combination Agreement, dated as of October 2, 2002 (the "Combination Agreement"), pursuant to which, among other things, a wholly-owned indirect subsidiary of Parent is merging with and into Pihana, the Pihana Stockholders are receiving shares of Parent's common stock, par value $0.001 per share (the "Common Stock"), and STT Communications is contributing one hundred percent (100%) of the capital stock of its wholly-owned subsidiary, i-STT Pte. Ltd., to a wholly-owned indirect subsidiary of Parent in exchange for Common Stock and shares of Parent's Series A Convertible Preferred Stock, $0.001 par value per share (the "Series A Preferred Stock") to be issued to i-STT Investments;

WHEREAS, pursuant to that certain Securities Purchase Agreement, dated as of October 2, 2002 (the "Purchase Agreement"), Parent will sell to i-STT Investments, as an assignee of STT Communications, Parent's 14% Series A-1 Convertible Secured Notes due 2007 and related warrants, which notes and warrants are convertible into shares of Parent's voting capital stock;

WHEREAS, Parent and each of the Stockholders desire to make certain arrangements among themselves with respect to the matters set forth herein; and

WHEREAS, it is a condition to the closing of the transactions contemplated by the Combination Agreement that this Agreement be executed and delivered by the parties;

NOW THEREFORE, the parties to this Agreement, intending to be legally bound hereby, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Combination Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Agreement" is defined in the preamble to this Agreement.

"Black-Out Period" means a period of not more than thirty days with regard to which Parent shall have furnished to the Holders of Registrable Securities a certificate signed by an executive officer of Parent stating, in the good faith judgment of the board of directors of Parent, it would be (a) materially detrimental to Parent and its stockholders for Parent to file a Registration Statement at such time or (b) a violation of the Securities Act for such Holders to sell shares pursuant to the applicable Registration Statement because of the existence of material non-public information that the board of directors has determined, in its good faith judgment, would be materially detrimental to Parent if disclosed.

"Board" means the board of directors of Parent.

"Business Day" means a day that is not a Saturday, a Sunday or a day on which banking institutions are required to be closed in City of New York, State of New York.

"Bylaws" is defined in Section 2.1.

"Certificate of Designation" means the Certificate of Designation attached to the Combination Agreement as Exhibit C.

"Closing Date" means the date and time of the closing of the transactions contemplated by the Combination Agreement.

"Combination Agreement" is defined in the recitals to this Agreement.

"Common Stock" is defined in the recitals to this Agreement.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"GAAP" means generally accepted accounting principals as applied in the United States from time to time.

"Holders" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 4.6 of this Agreement.

"Indemnified Person" is defined in Section 4.10.

"Indemnifying Person" is defined in Section 4.10.

"Initiating Holder" is defined in Section 4.1(b).

"Insufficient Amount" is defined in Section 4.3(a).

"i-STT Investments" is defined in the preamble to this Agreement

"NASD" means the National Association of Securities Dealers, Inc.

"Original Equinix Directors" shall mean Peter Van Camp, Michelangello Volpi and Andrew Rachleff.

"Pihana Stockholders" is defined in the preamble to this Agreement.

"Parent" is defined in the preamble to this Agreement.

"Participant" is defined in Section 4.8.

"Person" means an individual, trustee, corporation, partnership, limited liability company, joint stock company, trust, unincorporated association, union, business association, firm or other legal entity.

"Purchase Agreement" is defined in the preamble to this Agreement.

"Prospectus" means the prospectus included in any Registration Statement (including any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Qualified Offer" is defined in Section 3.2.

"Registrable Securities" means the shares of Common Stock issued under the Combination Agreement, or issued or issuable upon conversion of the Series A Preferred Stock issued under the Combination Agreement, that cannot otherwise be sold without registration under the Securities Act in any ninety-day period under Rule 144.

"Registration Statement" means any registration statement of Parent that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"Rule 144" means Rule 144 under the Securities Act or any similar rule (other than Rule 144A) or regulation hereafter adopted by the SEC providing for offers and sales of securities made in compliance therewith by subsequent holders that are not affiliates of an issuer of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 145" means Rule 145 under the Securities Act.

"Rule 405" means Rule 405 under the Securities Act.

"Rule 415" means Rule 415 under the Securities Act.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities" is defined in Section 3.1.

"Securities Act" means the Securities Act of 1933, as amended.

"Series A Preferred Stock" is defined in the recitals to this Agreement.

"Stockholders" is defined in the preamble to this Agreement.

"STT Communications" is defined in the preamble to this Agreement.

"Underwritten registration or underwritten offering" means a registration in which securities of Parent are sold to an underwriter for re-offering to the public.

1.2. Interpretation.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of and to this Agreement unless otherwise specified.

(c) The plural of any defined term shall have a meaning correlative to such defined term, and words denoting any gender shall include both genders and the neuter. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any modification, amendment or re-enactment thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued under or related to such legislation. All references to accounting terms shall have the meanings determined under GAAP.

(f) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(g) No prior draft nor any course of performance or course of dealing shall be used in the interpretation or construction of this Agreement.

(h) The descriptive headings in this Agreement are intended for reference purposes only and shall not be used in the interpretation or construction of this Agreement.

(i) The parties intend that each provision of this Agreement shall be given full separate and independent effect. Although the same or similar subject matters may be addressed in different provisions of this Agreement, the parties intend that, except as expressly provided in this Agreement, each such provision be read separately, be given independent significance and not be construed as limiting any other provision in this Agreement (whether or not more general or more specific in scope, substance or context).

ARTICLE 2

BOARD OF DIRECTORS

2.1. Board Representation. From and after the Closing Date, at each annual meeting of the stockholders of Parent, or at any meeting of the stockholders of Parent at which members of the Board are to be elected or the authorized number of directors is to be fixed or altered, or whenever such actions are to be taken by written consent for such purposes, each of STT Communications and i-STT Investments agrees to vote or otherwise give its consent in respect of all shares of capital stock of Parent (whether now or hereafter acquired) beneficially owned by it that are entitled to vote at such meeting, (i) in favor of the election to the board of those directors nominated pursuant to the provisions set forth in Article VII of Parent's Bylaws in substantially the form attached hereto as Exhibit A (the "Bylaws"), (ii) against any proposal that would increase the number of directors on the Board above nine, and (iii) against any amendment to Article VII or Section 8.1 of the Bylaws.

2.2. Reconstitution of Board as of Closing Date. As of the Closing Date, the parties will take all actions necessary to cause the Board to be constituted in the manner set forth in Article VII of the Bylaws, or by removing or causing to resign a sufficient number of directors to create vacancies, and by appointing individuals to fill such vacancies in accordance with the designation rights set forth in Article VII of the Bylaws.

2.3. Grant of Irrevocable Proxy. Concurrently with the execution of this Agreement, STT Communications and i-STT Investments shall deliver to Parent a proxy with respect to all of Parent's capital stock beneficially owned by STT Communications and i-STT Investments in the form attached hereto as Exhibit B (the "Proxy"), which shall be irrevocable to the fullest extent permissible by law.

2.4. Further Actions; Bylaws. From and after the Closing Date, Parent, STT Communications and i-STT Investments shall take all further actions as may be necessary to carry out the purposes of this Article 2. Without limiting the generality of the foregoing, Parent shall cause the Bylaws to be adopted, and each of STT Communications and i-STT Investments shall vote all of its shares, or execute consents in lieu thereof, in favor of all actions necessary to implement the terms of this Article 2.

2.5. Independent Directors. If required by federal laws and regulations and/or the listing requirements of the Nasdaq National Market or any other stock exchange or trading system on which the Common Stock may be listed from time to time, including to satisfy any requirement that a majority of Board members be "independent" within the meaning of such laws, regulations and requirements, the Stockholders agree that one Series A Director and the Pihana Director shall qualify as "independent." There shall be no requirement that any Equinix Directors be "independent" (other than as required by Section 7.2 of the Bylaws) until one Series A Director and the Pihana Director have been classified as "independent."

2.6. Termination. The rights and obligations of the parties under this Article II shall terminate upon the termination of Article VII of the Bylaws.

ARTICLE 3

STT COMMUNICATIONS RIGHT OF FIRST OFFER

3.1. Right of First Offer. Subject to the terms and conditions specified in this Article 3, Parent hereby grants to STT Communications a right of first offer with respect to future sales by Parent of its equity securities, or any security convertible into, exchangeable for, or exercisable for any equity securities (the "Securities"). STT Communications may designate as purchasers under such right itself or its partners, members, subsidiaries or assignees in such proportions as it deems appropriate. Each time Parent proposes to offer any Securities, except for (i) Securities issued pursuant to an Excluded Conversion Adjustment (as defined in the Securities Purchase Agreement under which the Notes were issued), or (ii) Securities issued pursuant to a Registration Statement (a "Registered Offering"), Parent shall first make an offering of such Securities to STT Communications in accordance with the following provisions:

(a) Parent shall deliver a notice ("Notice") to STT Communications stating (i) its bona fide intention to offer such Securities, (ii) the number of such Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Securities.

(b) Within 15 days after receipt of the Notice, STT Communications may elect to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of such Securities which equals the proportion that the number of Securities held by STT Communications bears to the total number of Securities then outstanding (the "STT Communications Pro Rata Shares").

(c) Parent may, during the 45-day period following the expiration of the period provided in subsection 3.1(b) hereof, offer the remaining unsubscribed portion of the Securities to any person or persons at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice. If Parent does not enter into an agreement for the sale of the Securities within such period, or if such agreement is not consummated within 60 days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Securities shall not be offered unless first reoffered to STT Communications in accordance herewith.

3.2. Registered Offerings. Subject to compliance with applicable securities laws, in connection with a Registered Offering of Securities by Parent, Parent shall first make an offering of such Securities to STT Communications in accordance with the following provisions:

(a) At least ten (10) business days prior to the anticipated effectiveness of any Registered Offering, Parent shall deliver a notice (the " Registration Notice") to STT Communications stating (i) its bona fide intention to offer such Securities, (ii) the number of such Securities to be offered, and (iii) the anticipated price and terms, if any, upon which it proposes to offer such Securities.

(b) Within five (5) days after receipt of the Registration Notice, STT Communications may indicate to Parent its interest in purchasing or obtaining, within the anticipated price range, up to the STT Communications Pro Rata Share.

(c) Parent shall notify STT Communications one (1) business day prior to the anticipated occurrence of the following events: (i) the anticipated pricing call at which the underwriters of the offering and Parent decide the final offering price (the " Pricing Call"), or (ii) if not an underwritten offering, at such time when Parent will set the final price for its offering (the " Parent Pricing").

(d) Within one (1) hour after the Pricing Call or the Parent Pricing, Parent shall notify STT Communications of the final price and number of shares to be sold (including any over allotments) and STT Communications shall have one (1) hour to deliver to Parent written notice of the number of shares it intends to purchase in the Registered Offering up to the STT Communications Pro Rata Share, including any shares of any over allotment that it elects to purchase, if exercised (the "STT Communications Notice"). The STT Communications Notice shall be evidence of STT Communications' obligation to purchase that number of shares indicated in such STT Communications Notice. STT Communications' failure to timely deliver the STT Communications Notice shall relieve Parent from any obligations under this Section 3.2 with respect to the Registered Offering.

3.3. Sole Benefit of STT Communications. This Article 3 is for the sole benefit of STT Communications and nothing in this Article 3 shall create any rights or remedies for Pihana Stockholders.

ARTICLE 4

REGISTRATION UNDER THE SECURITIES ACT

4.1. Demand Registration.

(a) Parent shall prepare and file with the SEC, not later than the 90 th day following the Closing Date, a Registration Statement covering the resale of all Registrable Securities, and shall use commercially reasonable efforts to cause such Registration Statement to become effective on or prior to the 180 th day following the Closing Date and to remain effective until all Registrable Securities have been sold.

(b) If the holders of a majority of Registrable Securities intend to distribute Registrable Securities by means of an underwriting, they shall so advise Parent. The underwriter will be selected by Parent, subject to the consent of a majority in interest of the Holders (which will not be unreasonably withheld). In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Holders and such Holder) to the extent provided in this Article 4. All Holders proposing to distribute Registrable Securities through such underwriting shall (together with Parent as provided in Section 4.4(e)) enter into an underwriting agreement in the form requested by the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 4.1, if the underwriter advises the Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the number of shares of Registrable Securities that may be included in the underwriting shall be allocated among the Holders in proportion (as nearly as practicable) to the amount of Registrable Securities owned by each Holder.

(c) Notwithstanding the foregoing, Parent shall have the right to defer the filing of the Registration Statement under this Section 2.1, or suspend the use of the related prospectus, during a Black-Out Period occurring after receipt of the request of the Initiating Note Holders; *provided* that Parent may not utilize such deferral or suspension right more than once in any six-month period.

(d) All expenses (other than underwriting discounts and commissions) incurred in connection with registration pursuant to Section 4.1, including all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for Parent and the reasonable fees and disbursements of one counsel for the selling Holders (not to exceed $50,000 per registration or underwriting) selected by the Holders of a majority of the Registrable Securities included in the offering shall be borne by Parent regardless of whether such Registration Statement is declared effective by the SEC.

4.2. Parent Registration.

(a) If (but without any obligation to do so) Parent proposes to register (including for this purpose a registration effected by Parent for stockholders other than the Holders) any of its stock or other securities under the Securities Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities to participants in a Parent stock plan, a registration with respect to any transaction within the scope of Rule 145 or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities), Parent shall give each Holder thirty days prior written notice of such registration. Upon the written request of each Holder given within fifteen days after receipt of such notice by Parent in accordance with Section 5.7, Parent shall, subject to the provisions of Section 4.2(c), use commercially reasonable efforts to cause all of the Registrable Securities that each such Holder has requested to be registered to be so registered under the Securities Act.

(b) Parent shall have the right to terminate or withdraw any registration initiated by it under this Section 4.2 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

(c) All expenses (other than underwriting discounts and commissions related to the Registrable Securities) incurred, in connection with any registration, pursuant to this Section 4.2, including all registration, filing, and qualification fees, printers and accounting fees, fees and disbursements of counsel for Parent and the fees and disbursements of one counsel for the selling Holders (not to exceed $50,000 per registration) selected by the holders of a majority of the Registrable Securities included in the offering shall be borne by Parent regardless of whether such Registration Statement is declared effective by the SEC.

(d) In connection with any offering involving an underwriting of shares of Parent's capital stock, Parent shall not be required under this Section 2.2 to include any of the Registrable Securities in such underwriting unless the Holders thereof accept the terms of the underwriting as agreed upon between Parent and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not, jeopardize the success of the offering by Parent. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by Parent that the underwriters determine in their sole discretion is compatible with the success of the offering, then Parent shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders) but in no event shall the amount of securities of the selling Holders of Registrable Securities included in the offering be reduced below thirty percent of the total amount of securities included in such offering. For purposes of the preceding parenthetical concerning apportionment, for any selling stockholder which is a Holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling stockholder," and any pro-rata reduction with respect to such "selling stockholder" shall be based upon the aggregate amount of Registrable Securities owned by all entities and individuals included in such "selling stockholder," as defined in this sentence.

4.3. Form S-3 Registration.

(a) Beginning 180 days following the Closing if at any time or from time to time Parent shall receive a written request or requests from any Holder that Parent effect a registration on Form S-3, or, if Parent is not then eligible for a registration on Form S-3, on Form S-1 related to a Rule 415 offering, with respect to all or a part of the Registrable Securities owned by such Holder, Parent will:

(i) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(ii) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen days after receipt of such written notice from Parent; *provided, however*, that Parent shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 4.3: (A) if the Holders, together with the holders of any other securities of Parent entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $250,000 (an "Insufficient Amount"); or (B) during a Black-Out Period. Parent shall have the right, in the case of an Insufficient Amount or Black-Out Period, to (x) defer the filing of the Form S-3 (or Form S-1) Registration Statement for a period of not more than sixty days, in the case of an Insufficient Amount, or the duration of the Black-Out Period, whichever is shorter, after receipt of the request of the Holder or Holders under this Section 2.3 or (y) suspend the use of the related prospectus for the Black-Out Period; *provided further* that Parent shall not utilize its deferral or suspension rights based on a Black-Out Period more than once in any six-month period; or (C) in any particular jurisdiction in which Parent would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance; and

(iii) keep such Registration Statement effective for the shorter of 18 months or until the distribution contemplated in the Registration Statement has been completed; *provided, however*, that such 18-month period shall be extended for a period of time equal to (A) the period in which any Holder refrains from selling any securities included in such Registration Statement at the request of an underwriter of Common Stock (or other securities of Parent); (B) the period in which any Holder refrains from selling any securities included in such Registration Statement at the request of Parent to permit Parent to amend such Registration Statement; (C) the duration of a Black-Out Period during which the use of a prospectus was suspended or sales of Registrable Securities by a Selling Holder were not permitted and (D) the periods for which effectiveness of the Registration Statement has been suspended as permitted by this Agreement.

(b) If a Holder or Holders requests that a Parent registration under Section 4.3(a) be made for an offering on a continuous basis pursuant to Rule 415 under the Securities Act on Form S-3 (or Form S-1), Parent shall (i) register the Registrable Securities of such Holder or Holders, as the case may be, on a continuous basis and (ii) use commercially reasonable efforts to keep such Registration Statement effective for 18 months or until all Registrable Securities covered by such Registration Statement have been sold.

(c) All expenses (other than underwriters' discounts or commissions associated with Registrable Securities) incurred in connection with a registration requested pursuant to this Section 4.3, including all registration, filing and qualification fees, printer's and accounting fees, fees and disbursements of counsel for Parent and the reasonable fees and disbursements of one counsel for the selling Holder or Holders (not to exceed $50,000 per registration) and counsel for Parent, shall be borne by Parent regardless of whether such

Registration Statement is declared effective by the SEC. Registrations effected pursuant to this Section 4.3 shall not be counted as demands for registration pursuant to Section 4.1.

4.4. Obligations of Parent. Whenever required under this Article 4 to effect the registration of any Registrable Securities, Parent shall, as expeditiously as reasonably possible:

(a) Registration Statement. Prepare and file with the SEC a Registration Statement with respect to such Registrable Securities and use its best efforts to cause such Registration Statement to become effective.

(b) Amendments. Prepare and file with the SEC such amendments and supplements to such Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement.

(c) Prospectuses. Furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Blue Sky. Use its best efforts to register and qualify the securities covered by such Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that Parent shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless Parent is already subject to service in such jurisdiction and except as may be required by the Securities Act.

(e) Underwriting Agreement. If an offering is an underwritten public offering, enter into and perform its obligations under an underwriting agreement requested by the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notice of Misstatement or Omission. Notify each Holder covered by such Registration Statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Listing or Quotation. Cause all such Registrable Securities registered pursuant to this Agreement to be listed on each securities exchange on which similar securities issued by Parent are then listed.

(h) Transfer Agent: CUSIP. Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(i) Legal Opinion. Use commercially reasonable efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Article 4, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Article 4, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the Registration Statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel for Parent, in form and substance as is customarily requested by the underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent certified public accountants of Parent and any acquired company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities.

4.5. Obligations of Holders.

(a) It shall be a condition precedent to the obligations of Parent to take any action pursuant to this Article 4 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to Parent such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

(b) Parent shall have no obligation with respect to any registration requested pursuant to Section 4.3 if the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger Parent's obligation to initiate such registration as specified in Section 4.3(a).

4.6. Assignment of Registration Rights. The rights to cause Parent to register Registrable Securities pursuant to this Article 4 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities *provided*: (a) Parent is furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act.

4.7. Limitations on Subsequent Registration Rights. Unless unanimously approved by the Parent board of directors, from and after the date of this Agreement, Parent shall not, without the prior written consent of the Holders of a majority of the then-outstanding Registrable Securities, enter into any new agreement with any holder or prospective holder of any securities of Parent which would allow such holder or prospective holder (a) to include such securities in any registration filed under Section 4.1, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such holder's prospective holder's securities will not reduce the amount of the Registrable Securities of the Holders that is included or (b) to make a demand

registration which could result in such Registration Statement being declared effective prior to the date of the first demand registration pursuant to Section 4.1(a) or within 120 days of the effective date of any registration effected pursuant to Section 4.1.

4.8. Indemnification by Parent. Parent agrees to indemnify and hold harmless each Holder of Registrable Securities to be included in any Registration Statement, the officers, directors, partners and members of each such Person, and each Person, if any, who controls any such Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a "Participant"), from and against any and all losses, claims, damages and liabilities (including the reasonable legal fees and other reasonable expenses actually incurred in connection with any suit, action, proceeding, investigation or any claim asserted or threatened) caused by, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus (as amended or supplemented if Parent shall have furnished any amendments or supplements thereto) or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except insofar as such losses, claims, damages or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Participant furnished to Parent in writing by or on behalf of such Participant expressly for use therein; *provided*, *however*, that Parent shall not be liable if such untrue statement or omission or alleged untrue statement or omission was contained or made in any preliminary prospectus and corrected in the Prospectus or any amendment or supplement thereto and the Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission of a material fact that was the subject matter of the related proceeding and any such loss, liability, claim, damage or expense suffered or incurred by the Participants resulted from any action, claim or suit by any Person who purchased Registrable Securities that are the subject thereof from such Participant and it is established in the related proceeding that such Participant had been provided with such Prospectus and failed to deliver or provide a copy of the Prospectus (as amended or supplemented) to such Person with or prior to the confirmation of the sale of such Registrable Securities sold to such Person unless such failure to deliver or provide a copy of the Prospectus (as amended or supplemented) was a result of noncompliance by Parent with this Agreement.

4.9. Several Indemnification by Participants. Each Participant agrees, severally and not jointly, to indemnify and hold harmless Parent, each other Participant, its directors and officers and each Person who controls Parent and each other Participant within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including the reasonable legal fees and other reasonable expenses actually incurred in connection with any suit, action, proceeding, investigation or any claim asserted or threatened) caused by, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus (as amended or supplemented if Parent shall have furnished any amendments or supplements thereto) or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, only insofar as such losses, claims, damages or liabilities are caused by any untrue

statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Participant furnished to Parent in writing by or on behalf of such Participant expressly for use therein; *provided*, *however*, that a Participant shall not be liable if such untrue statement or omission or alleged untrue statement or omission was contained or made in any preliminary prospectus and corrected in the Prospectus or any amendment or supplement thereto and the Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission of a material fact that was the subject matter of the related proceeding and any such loss, liability, claim, damage or expense suffered or incurred by Parent or any other Participant resulted from any action, claim or suit by any Person who purchased Registrable Securities that are the subject thereof from such other Participant and it is established in the related proceeding that Parent or such other Participant, as applicable, had been provided with such Prospectus and failed to deliver or provide a copy of the Prospectus (as amended or supplemented) to such Person with or prior to the confirmation of the sale of such Registrable Securities sold to such Person unless such failure to deliver or provide a copy of the Prospectus (as amended or supplemented) was a result of noncompliance by such Participant with this Agreement. No Participant shall be liable under this Article 4 for any amounts in excess of such Participant's proceeds from the sale of such Participant's Registrable Securities.

4.10. Indemnification Procedures.

(a) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such Person (the " Indemnified Person") shall promptly notify the Person against whom such indemnity may be sought (the " Indemnifying Person") in writing, and the Indemnifying Person, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Indemnifying Person may reasonably designate in such proceeding and shall pay the reasonable fees and expenses actually incurred by such counsel related to such proceeding; *provided, however*, that the failure to so notify the Indemnifying Person shall not relieve it of any obligation or liability which it may have hereunder or otherwise, except to the extent of any prejudice caused by such delay. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel if it would be a conflict of interest for the Indemnified Person and the Indemnifying Person to be represented by the same counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (a) the Indemnifying Person and the Indemnified Person shall have mutually agreed in writing to the contrary, (b) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person or (c) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and there are one or more defenses available to the Indemnified Person that are not available to the Indemnifying Person. It is understood that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such reasonable fees and expenses shall be reimbursed as they are incurred. Any such separate firm for the Participants and such control Persons of Participants shall be designated in writing by Participants who sold a majority in interest of Registrable Securities sold by all such Participants

and any such separate firm for Parent, its directors, officers and control Persons of Parent shall be designated in writing by Parent. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with such consent or if there is a final non-appealable judgment for the plaintiff, the Indemnifying Person agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement (y) includes an unconditional release of such Indemnified Person, in form and substance satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (z) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of an Indemnified Person.

4.11. Contribution.

(a) If the indemnification provided for in the preceding sections of this Article 4 is unavailable to, or insufficient to hold harmless, an Indemnified Person in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraphs, in lieu of indemnifying such Indemnified Person thereunder and in order to provide for just and equitable contribution, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnifying Person or Persons on the one hand and the Indemnified Person or Persons on the other in connection with the statements or omissions (or alleged statements or omissions) that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Person on the one hand or by the Indemnified Person, as the case may be, on the other, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission and any other equitable considerations appropriate under the circumstances.

(b) The parties agree that it would not be just and equitable if contribution pursuant to this Article 4 were determined by pro rata allocation (even if the Participants were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses actually incurred by such Indemnified Person in connection with investigating or defending any such suit, action, proceeding or investigation or claim. Notwithstanding the provisions of this Article 4, in no event shall a Participant be required to contribute any amount in excess of the amount by which proceeds received by such Participant from sales of Registrable Securities exceeds the amount of any damages that such Participant has otherwise been required to pay by reason of such untrue or

alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11 of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

4.12. Additional Remedies. The indemnity and contribution agreements contained in this Article 4 will be in addition to any liability which the Indemnifying Persons may otherwise have to the Indemnified Persons referred to above.

ARTICLE 5

MISCELLANEOUS

5.1. Rule 144. Parent covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder in a timely manner and, if at any time it is not required to file such reports, it will, upon the request of any Holder of Registrable Securities, make available other information so long as necessary to permit sales pursuant to Rule 144.

5.2. Legend. Upon the execution of this Agreement, the certificates representing all Common Stock and Series A Preferred Stock held by the Stockholders shall be endorsed with the following legend:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS WITH RESPECT TO VOTING AND OTHER MATTERS UNDER A GOVERNANCE AGREEMENT, DATED AS OF DECEMBER 31, 2002, BY AND AMONG EQUINIX, INC. AND CERTAIN OF ITS STOCKHOLDERS.

In the event that any Stockholder sells, transfers or otherwise disposes of Shares, the foregoing legend shall, at the request of the holder, be removed from the certificates representing the Shares so sold, transferred or disposed of, provided that the sale, transfer or disposition is effected subject to the adjustment or termination of the board representation rights of the Stockholders pursuant to Article 2 hereof as a result of such sales, transfers or dispositions.

5.3. Remedies. If Parent breaches of any of its obligations under this Agreement, each Holder of Registrable Securities, in addition to being entitled to exercise all rights provided herein, or granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. Parent agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

5.4. No Inconsistent Agreements. Parent has not entered, as of the date hereof, into any agreement with respect to any of its securities that is inconsistent with, diminishes, or other limits the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

5.5. Adjustments Affecting Registrable Securities. Parent shall not, directly or indirectly, take any action with respect to the Registrable Securities as a class distinct from other holders of Parent Capital Stock that would adversely affect the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement.

5.6. Amendments and Waivers. Except as set forth in Section 3.3, the provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, otherwise than with the prior written consent of Parent, STT Communications and a majority in interest of the Pihana Stockholders.

5.7. Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, internationally recognized overnight air courier or telecopier with verification of receipt addressed as set forth below, as set forth on the signature page of this Agreement, or at such other address as a party may designate by prior written notice to the other parties hereto:

if to Parent:

Equinix, Inc.
2450 Bayshore Parkway
Mountain View, CA 94043-1107
Facsimile No.: (650) 316-6900
Attention: General Counsel

with a copy (which shall constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
155 Constitution Drive
Menlo Park, California 94025
Facsimile No.: (650) 321-2800
Attention: Scott C. Dettmer
Christopher D. Dillon

if to Pihana Stockholders, a copy (which shall not constitute notice) to:

Brobeck Phleger & Harrison LLP
550 South Hope Street
Los Angeles, CA 90071
Facsimile No.: (213) 745-3345
Attention: Richard S. Chernicoff

if to STT Communications or i-STT Investments:

Chief Financial Officer
General Counsel
STT Communications Ltd.
51 Cuppage Road
#10-11/17
Starhub Centre
Singapore 229469
Facsimile No.: (65) 6720 7277

with a copy (which shall not constitute notice) to:

Tan Aye See
Assistant Vice President – Legal
STT Communications Ltd.
51 Cuppage Road
#10-11/17
Starhub Centre
Singapore 229469
Facsimile No.: (65) 6720 7277

with a copy (which shall constitute notice) to:

Latham & Watkins
135 Commonwealth Drive
Menlo Park, CA 94025
Facsimile No.: (650) 463-2600
Attention: Robert Koenig

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; two Business Days after being timely delivered to an internationally recognized overnight delivery service (such as Federal Express); and when delivery is confirmed by a telephone call received by sender confirming receipt, if telecopied.

5.8. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto and, with respect to Articles 4 and 5 hereof, the Holders, subject to the right of Stockholders to sell, transfer or dispose of Shares free of restriction under this Agreement as set forth in Section 5.2.

5.9. Counterparts. This Agreement may be executed in one or more counterparts (whether delivered by facsimile or otherwise), each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

5.10. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

5.11. Governing Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

5.12. Arbitration.

(a) All disputes, controversies or claims (whether in contract, tort or otherwise) arising out of, relating to or otherwise by virtue of, this Agreement, breach of this Agreement or the transactions contemplated by this Agreement shall be finally settled under the Rules of Arbitration (except as set forth below) of the London Court of International Arbitration (as amended from time to time, the "LCIA Rules"). EACH PARTY ACKNOWLEDGES THAT IT IS WAIVING ANY RIGHTS IT MAY HAVE TO TRIAL BY JURY.

(b) The arbitration shall be seated in London, England, in the English language and shall be the exclusive forum for resolving such disputes, controversies or claims. The arbitrator shall have the power to order hearings and meetings to be held in such place or places as he or she deems in the interests of reducing the total cost to the parties of the arbitration.

(c) The arbitration shall be held in before a single arbitrator. Each party to the arbitration shall submit a list of three proposed arbitrators, who each meet the criteria set forth in Section 5.12(d) within ten Business Days of service of the request for arbitration on the last respondent. The LCIA Court (as referred to in the LCIA Rules) shall select from among such nominations, with any person nominated by more than one party to the arbitration being per se the nominee of each party.

(d) The arbitrator shall have practiced the field of law that is principally the subject of such dispute, controversy or claim in the State of Delaware for at least ten years. The arbitrator may be of the same nationality as any party. The arbitrator shall have the power to order equitable remedies and not just the payment of monies. Notwithstanding the LCIA Rules, no party shall have the right to seek a court order of interim or conservatory measures, other than a court order confirming and enforcing an arbitral award of interim or conservatory measures. The arbitrator may hear and rule on dispositive motions as part of the arbitration proceeding (e.g. motions for judgment on the pleadings, summary judgment and partial summary judgment).

(e) All timetables and deadlines (and criteria for granting extensions and waivers thereof) for the conduct of the arbitration shall be set in accordance with the rules then interpreted and applied in the Court of Chancery of the State of Delaware of and for the County of New Castle. The Arbitrator shall not have the power to abridge such time requirements.

(f) Discovery shall be permitted to the extent, and under the conditions, then in effect in the Court of Chancery of the State of Delaware of and for the County of New Castle. The arbitrator may appoint an expert only with the consent of all of the parties to the arbitration. Testimony of witnesses may be challenged to the extent, and under the conditions, then in effect in the Court of Chancery of the State of Delaware of and for the County of New Castle.

(g) All deposits required under the LCIA Rules shall be paid equally by all parties to the arbitration. Each party shall to the arbitration shall pay its own costs and expenses (including, but not limited to, attorney's fees) in connection with the arbitration.

(h) The award rendered by the arbitrator shall be executory, final and binding on the parties. The award rendered by the arbitrator may be entered into any court having jurisdiction (including, the courts of the State of Delaware), or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be. Such court proceeding shall disclose only the minimum amount of information concerning the arbitration as is required to obtain such acceptance or order.

(i) Except as required by law, no party to this Agreement nor the arbitrator may disclose the existence, content or results of an arbitration brought pursuant to this Agreement.

5.13. Severability. Any term or provision of this Agreement that is held to be invalid, void or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement. If any term or provision of this Agreement is determined by the arbitrator to be invalid, void or unenforceable, the parties agree that the arbitrator shall have the power to and shall, subject to the arbitrator's discretion, reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

5.14. Registrable Securities Held by Parent or Its Affiliates . Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by Parent 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.

5.15. Third Party Beneficiaries. All Persons who become Holders of Registrable Securities are intended third party beneficiaries of Articles 4 and 5 of this Agreement and such provisions may be enforced by such Persons.

5.16. Entire Agreement. This Agreement, together with the Combination Agreement and the Securities Purchase Agreement, dated as of October 2, 2002, by and among Parent, the subsidiaries of Parent that from time to time become guarantors of Parent's obligations thereunder, and the Purchasers named therein, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between STT Communications, the Pihana Stockholders, the Equinix Stockholders or Parent, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

5.17. Aggregation of Securities. All Securities acquired pursuant to the Combination Agreement or the Purchase Agreement (and the associated notes and warrants) by affiliated entities (including affiliated venture capital funds) or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

EQUINIX, INC.

By: /s/ PETER F. VAN CAMP

Name: Peter F. Van Camp
Title: Chief Executive Officer

STT COMMUNICATIONS LTD

By: /s/ JEAN MANDEVILLE

Name: Jean Mandeville
Title: Chief Financial Officer

i-STT INVESTMENTS PTE LTD

By: /s/ JEAN MANDEVILLE

Name: Jean Mandeville
Title: Chief Financial Officer

LONETREE III L.L.C.

By: /s/ CHARLES M. LILLIS

Name: Charles M. Lillis
Title: Sole Member

GPSF-F INC.

By: /s/ MOLLY FERGUSSON

Name: Molly Fergusson
Title: Vice President

COLUMBIA CAPITAL EQUITY PARTNERS II (QP), L.P.
By: Columbia Capital Equity Partners, L.L.C., its General Partner

By: /s/ DONALD A DOERING

Name: Donald A. Doering
Title: Chief Financial Officer

COLUMBIA PIXC PARTNERS, LLC
By: Columbia Capital, L.L.C., its Manager

By: /s/ DONALD A DOERING

Name: Donald A. Doering
Title: Chief Financial Officer

COLUMBIA PIXC PARTNERS III, LLC
By: Columbia Capital III, LLC, its Manager

By: /s/ DONALD A DOERING

Name: Donald A Doering
Title: Chief Financial Officer

RICHARD KALBRENER

By: /s/ RICHARD KALBRENER

Exhibit 10.61

ST Telecommunications Pte Ltd

51 Cuppage Road
#10-11/17, StarHub Centre
Singapore 229469
Tel: (65) 836 3988
Fax: (65) 835 0200

LETTER OF ACCEPTANCE

31 January 2000

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

Attn: Ms Vanessa Loh

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES. #06-01, #06-05 TO #06-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

1. We refer to your letter of offer and letter, Ref JTC(L)7329/30, dated 25 January 2000 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

2. We enclose herewith a cheque for the amount of $43,298.97 and the Banker's Guarantee of $118,895.43 as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

/s/ SIO TAT HIANG

Name of authorised signatory:	}	Sio Tat Hiang
Designation:	}	Executive Vice President
for and on behalf of	}	ST TELECOMMUNICATIONS PTE LTD.

in the presence of:

/s/ LEE YOONG KIN

Name of witness:	}	Lee Yoong Kin
NRIC No:	}	14925441

ST Telecommunications Pte Ltd

51 Cuppage Road
#10-11/17, StarHub Centre
Singapore 229469
Tel: (65) 836 3988
Fax: (65) 835 0200

LETTER OF ACCEPTANCE

31 January 2000

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

Attn: Ms Vanessa Loh

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES. #05-05 TO #05-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

4. We refer to your letter of offer and letter, Ref JTC(L)7329/30, dated 25 January 2000 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

5. We enclose herewith a cheque for the amount of $36,079.88 and the Banker's Guarantee of $99,069.72 as security deposit as confirmation of our acceptance.

6. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

/s/ SIO TAT HIANG

Name of authorised signatory:	}	Sio Tat Hiang
Designation:	}	Executive Vice President
for and on behalf of	}	ST TELECOMMUNICATIONS PTE LTD.

in the presence of:

/s/ LEE YOONG KIN

Name of witness:	}	Lee Yoong Kin
NRIC No:	}	14925441

Ref JTC(L)7329/30 **CONFIDENTIAL** JTC

25 Jan 2000

Mr. Lee Yoong Kin
General Manager, OPS and Planning
ST Telecommunications Pte Ltd.
51 Cuppage Road #10-11/17 StarHub Centre
Singapore 229469 (By Fax and mail)

RE: CONDITIONS OF AGREEMENT FOR THE TWO LETTERS OF OFFER FOR
1. BLK 20 AYER RAJAH CRESCENT #06-01, #06-08 TO 08 (2,012 SQM)
2. BLK 20 AYER RAJAH CRESCENT #05-05 TO 08 (1,684 SQM)

1 We refer to the two Letters of Offer dated 25 Jan 2000 for the above factory space and state the special conditions below in addition to the terms and conditions in the Letters of Offer for the above 2 sites at 3,705 sqm.

2 ST Telecommunications PL will be granted a 9-month period for the Right-of-First Refusal (ROFR) for the remaining floor areas on 5 th and 6th floors of 20 ARC at approximately 2,295 sqm. The 9-month ROFR period will commence from the Lease Commencement Date of the above 2 sites i.e. from 1 Aug 2000. ROFR will expire on 30 Apr 2001.

3 The 3-tier rental package for the first 3 year tenancy indicated in the two Letters of Offer are granted on the condition that your company will rent two whole floors (5th and 6th floors) at 20 ARC by mid-2001. Failing which, the rental package will be adjusted to the prevailing posted rent and subject to the normal bulk discount rate (i.e. 3% for aggregate floor area exceeding 1,000 sqm and 4% for exceeding 5,000 sqm).

4 For the property management services, the Property Management Department (PMD) of Customer Services Group (CTG) has confirmed that the estimated response time to the mechanical and electrical breakdown is:

- During office hours (Mon to Fri from 8:30 am to 5:30 pm and Sat from 8:30 am to 1 pm) – within 1 hour
- After office hours – within 2 hours

5 We await your written confirmation and agreement of the above by 31 Jan 2000. The acceptance of the above is in addition to the Letter of Acceptance in response to the two Letters of Offer. Thank you.

Sincerely

/s/ VANESSA LOH

Vanessa Loh
Marketing & Sales Department
Jurong Town Corporation

Jurong Town Corporation
Jurong Town Hall
301 Jurong Town Hall Road
Singapore 609431
Republic of Singapore
Tel: 5600056
Fax: 5655301
Website www.jtc.gov.sg

JTC(L)7329/30/VL/AL

25 January 2000

DID: 5688943
FAX: 5688593
Email vanesssaloh@jtc.gov.sg
JTC

ST TELECOMMUNICATIONS PTE LTD
Blk 51 Cuppage Rd
#10-11
Singapore 229469
Singapore 229469

BY FAX @ 8350200
& AR REGISTERED

(Attn: Mr Ng Hiang Cheok/Lee Yoong Kin)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE

1. We are pleased to offer a tenancy of the Premises subject to the following covenants, terms and conditions in this letter and a letter [Ref JTC(L)7329/30] dated 25 Jan 2000 and in the annexed Memorandum of Tenancy ("the Offer"):

1.01 Location:

Pte Lot A19857, Blk 20 ("the Building") Ayer Rajah Cres #06-01 and Pte Lot A19857(a) at #06-05 to #06-08, Ayer Rajah Industrial Estate Singapore 139964 ("the Premises") as delineated and edged in red on the plan attached to the Offer.

1.02 Term of Tenancy:

3 years ("the Term") with effect from 1 August 2000 ("the Commencement Date").

1.03 Tenancy Agreement:

Upon due acceptance of the Offer in accordance with clause of this letter, you shall have entered into a tenancy agreement with us ("the Tenancy") and will be bound by the covenants, terms and conditions thereof.

In the event of any inconsistency or conflict between any covenant, term or condition of this letter and the Memorandum of Tenancy, the relevant covenant, term or condition in this letter shall prevail.

1.04 Area:

Approximately 2,021.0 square metres (subject to survey).

1.05 Rent and Service Charge:

Rent:

(a) Discounted rate of:

(i) $14.50 per square metre per month for the period from 1 August 2000 to 31 July 2001;

(ii) $14.80 per square metre per month for the period from 1 August 2001 to 31 July 2002;

(iii) $15.11 per square metre per month for the period 1 August 2002 to 31 July 2003.

(b) Normal rate of:

$15.90 per square metre per month for the period from 1 August 2000 to 31 July 2001

("Rent") to be paid without demand and in advance without deduction on the 1 st day of each month of the year (i.e. 1 st of January, February, March, etc.). The next payment shall be made on 1 September 2000.

Service charge:

$4.50 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.05(a) Air-conditioning Charge:

$0.008 per square metre per hour as charges for air-conditioning utility rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time in the same manner as the Service Charge.

1.06 Security Deposit/Banker's Guarantee:

You will at the time of acceptance of the Offer be required to place with us a deposit of $118,895.43 equivalent to 3 months' Rent (at the discounted rate) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (effective from 1 February 2000 to 31 January 2004) and/or such other form of security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to your for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the deductions so that the Security Deposit shall at all times be equal to 3 months' Rent and Service Charge.

1.07 Mode of Payment:

Except for the payment to be made with your letter of acceptance pursuant to clause 2 of this letter, during the Term, you shall pay Rent, Service Charge and GST by Interbank GIRO or any other mode to be determined by us.

[Note: Accordingly, you are to provide us with the duly completed GIRO authorization form enclosed herewith.

However, pending finalisation for the GIRO arrangement, you shall pay Rent, Service Charge and GST as they fall due by cheque].

1.08 Permitted Use:

(a) Subject to clause 1.12 of this letter, you shall commence full operations within four (4) months of the Commencement Date for the purpose of providing full internet-based related activities including data centre, call centre, regional network management, product and software development and facilities hosting etc only and for no other purpose whatsoever ("the Authorised Use").

(b) Thereafter, you shall maintain full and continuous operations and use and occupy the whole of the Premises for the Authorised use.

1.09 Approvals

The Tenancy is subject to approvals being obtained from the relevant government and statutory authorities.

1.10 Possession of Premises:

(a) Keys to the Premises will be given to you six (6) months prior to the Commencement Date subject to due acceptance of the offer ("Possession Date").

(b) From the Possession Date until the Commencement Date, you shall be deemed a licensee upon the same terms and conditions in the Tenancy.

(c) if you proceed with the Tenancy after the Commencement Date, the license fee payable from the Possession Date to the Commencement Date shall be waived ("Rent-Free Period") Should you fail to so proceed, you shall:

(i) remove everything installed by you;

(ii) reinstate the Premises to its original state and condition; and

(iii) pay us a sum equal to the prevailing market rent payable for the period from the Possession Date up to the date the installations are removed and reinstatement completed to our satisfaction.

without prejudice to any other rights and remedies we may have against you under the Tenancy or at law:

1.11 Preparation and Submission of Plans:

(a) No alternation, addition, improvement, erection, installation or interference to or in the Premises or the fixtures and fittings therein is permitted without Building Control Unit [BCU(JTC)] prior written consent. Your attention is drawn to clauses 2.10 to 21.9 and 2.34 of the Memorandum of Tenancy.

(b) You will be required to prepare and submit floor layout plans of your factory in accordance with the terms of the tenancy and the 'Guide' attached. It is important that you should proceed with the preparation and submission of the plans in accordance with the procedures set out in the said 'Guide'.

(c) Should there be alteration of existing automatic fire alarm and sprinkler system installation, alteration plans should be submitted to Building Control Unit [BCU(JTC)] for approval on fire safety aspects. All fire alarm & sprinkler system plans must be signed by a relevant Professional Engineer, registered with the Professional Engineers Board of Singapore.

(d) Upon due acceptance of the Offer, a copy of the floor and elevation plans (transparencies) will be issued to you to assist in the preparation of the plans required herein.

(e) No work shall commence until the plans have been approved by Building Control Unit [BCU(JTC)].

(f) Kindly note that at present URA requires you to use and occupy at least sixty per cent (60%) of the gross floor area of the Premises for industrial activities and ancillary warehousing activities; and you may use and

occupy the remaining gross floor area, if any, for offices, showrooms, neutral areas or communal facilities and such other uses as may be approved in writing by us and the relevant governmental and statutory authorities. Nonetheless, as provided in paragraph 1.08, you shall ensure that the Premises:

(i) are used primarily for the industrial activities stipulated in the authorised use approved by us; and

(ii) are not used or occupied for the purpose of offices, showrooms, storage, warehousing, industrial activities unrelated to such authorised use or for any other use unless approved in writing by us and the relevant governmental statutory authorities.

1.12 Final Inspection:

You shall ensure that final inspection by us of all installations is carried out and our approval of the same is obtained before any operations in the Premises may be commenced.

1.13 Special Conditions:

(1) Normal (Ground & Non-ground) Floor Premises

You shall comply and ensure compliance with the following restrictions.

(a) maximum loading capacity of the goods lifts in the Building, and

(b) maximum floor loading capacity of 10.0 kiloNewtons per square metre of the Premises on the 6 th storey of the Building PROVIDED THAT any such permitted load shall be evenly distributed.

We shall not be liable for any loss or damage that you may suffer from any subsidence or cracking of the ground floor slabs and aprons of the Building.

(2) You shall comply and ensure compliance with all notices, rules and regulations relating to the use of the Carpark (as defined in the Memorandum of Tenancy) including but not limited to:

(i) parking or placing of container, vehicles, trailers or other carriages; and

(ii) parking charges.

(3) You are to connect the mechanical ventilation system in the Premises to the switchboard installed by you, subject to clauses 2.12, 2.13 and 2.14 of the Memorandum of Tenancy.

(4) Option for renewal of tenancy:

(a) You may within 3 months before the expiry of the Term make a written request to us for a further term of tenancy.

(b) We may grant you a further term of tenancy of the Premises upon mutual terms to be agreed between you and us subject to the following:

(i) there shall be no breach of your obligations at the time you make your request for a further term;

(ii) our determination of revised rent, having regard to the market rent of the Premises at the time of granting the further term, shall be final;

(iii) we shall have absolute discretion to determine such covenants, terms and conditions, but excluding a covenant for renewal of tenancy; and

(iv) there shall not be any breach of your obligations at the expiry of the Term

2. Mode of Acceptance:

The Offer shall lapse if we do not receive the following by 31 January 2000:

- Duly signed letter of acceptance (in duplicate) of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix.)**
- Payment of the sum set out in clause 4.
- Duly completed GIRO authorization form.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

	Amount		+3% GST
1st Year:			
Rent at $14.50 psm per month on 2,021 sqm for the period 1 August 2000 to 31 August 2000	$29,304.50		
Service Charge at $4.50 psm per month on 2,021 sqm for the period 1 August 2000 to 31 August 2000	$ 9,094.50	$ 38,399.00	$1,151.97
Deposit equivalent to three months' rent (at the discounted rate payable in the third year of the Term) and service charge [or Banker's Guarantee provided in accordance with sub-paragraph 106 above]		$118,895.43	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC on your behalf		$ 3,748.00	
Sub-Total Payable		$ 161,042.43	$1,151.97
Add: GST + 3%		$ 1,151.97	
Total Payable inclusive of GST		$ 162,194.40	

5. Rent-Free Period:

As the Commencement Date will not be deferred, we advise you to accept the Offer as soon as possible and to collect the keys to the Premises on the scheduled date in order to maximize the Rent-Free Period referred to in clause 1.10(c) of this letter.

6. Variation to the Tenancy

This letter and the Memorandum of Tenancy constitute the full terms and conditions governing the Offer and no terms or representation or otherwise, whether express or implied, shall form part of the Offer other than what is contained herein. Any variation, modification, amendment, deletion, addition or otherwise of the covenants, terms and conditions of the Offer shall not be enforceable unless agreed by both parties and reduced in writing by us.

7. Season Parking:

Season parking tickets for car parking lots within the Estate can be purchased from the JTC Zone Office serving the Estate (Contact no. of the East Zone Office is: 2999405). Please note that the number of season parking ticket(s) that can be purchased by you will depend on eligibility rules set out by us.

8. Application for Approvals, Utilities etc.

Upon your acceptance of the covenants, terms and conditions of the Offer, you are advised to proceed expeditiously as follows:

8.01 Preliminary Clearance:

Comply with the requirements of the Chief Engineer (Central Building Plan Unit), Pollution Control Department and/or other departments pursuant to your application/s for

preliminary clearance. (Please note that we have referred your application to the relevant department/s)

8.02 Discharge of Trade Effluence:

Complete the attached Application for Permission to Discharge Trade Effluent into Public Sewer and return the application form direct to the Head, Pollution Control Department, Ministry of Environment, Environment Building, 40 Scotts Road, Singapore 228231 (Telephone No. 7327733).

8.03 Electricity:

Engage a registered electrical consultant or competent contractor to submit three sets of electrical single-line diagrams to and in accordance with the requirements of our Property Support Department (PSD), Customer Services Group, JTC East Zone Office for endorsement before an application is made to the Power supply Pte Ltd to open an account for electricity connection. Please contact our Property Support Department (PSD) at Blk 25 Kallang Avenue #05-01 Kallang Basin Industrial Estate Singapore 339416 direct for their requirements.

8.04 Water:

Submit four copies of sketch plans, prepared by a licensed plumber, showing the section and layout of the plumbing, to our Building Control Unit [BCU(JTC)] for approval prior to the issue of a letter to Water Conservation Department, Public Utilities Board to assist you in your application for a water sub-meter.

8.05 Telephone:

Apply direct to Singapore Telecommunications Ltd for all connections.

8.06 Automatic Fire Alarm System (Incorporating Heat Detector)

Engage a registered electrical consultant/professional engineer to submit two sets of fire alarm drawings, indicating the existing fixtures if any, the proposed modifications of the fire alarm and the layout of machinery, etc. to and in accordance with the requirements of our Building Control Unit [BCU(JTC)]. Please contact our Building Control Unit [BCU(JTC)] at 301 Jurong Town Hall Road (3 rd level) Singapore 609431 direct for further requirements.

8.07 Factory Inspectorate

Complete and return direct to Chief Inspector of Factories the attached form, “Particulars to be submitted by occupiers or Intending Occupiers of Factories.”

Yours faithfully

/s/ VANESSA LOH

Vanessa Loh
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Encl

Draft of Letter of Acceptance

(Please use company's letterhead and in Duplicate)

Date: <To be dated on the day this Letter is forwarded to JTC>

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

BY HAND

(Attn: Vanessa Loh)

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #06-01, #06-05 TO #06-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964.

1. We refer to your letter of offer and letter [Ref JTC(L)7329/30] dated [25 January 2000] for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of [$162,194.40] as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of [$43,298.97] and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of :

[ST TELECOMMUNICATIONS PTE LTD]

in the presence of:

[Name of witness:]
[NRIC No.]

* Please omit if not applicable

Exhibit 10.62

LETTER OF ACCEPTANCE

31 January 2000

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

Attn: Ms Vanessa Loh

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #05-05 To # 05-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

4. We refer to your letter of offer and letter Ref JTC(L)7329/30 dated 25 January 2000 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

5. We enclose herewith a cheque for amount of $36,079.88 and the Banker's Guarantee of $99,069.72 as security deposit as confirmation of our acceptance.

6. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

/s/ SIO TAT HIANG

Name of authorised signatory:	}	Sio Tat Hiang
Designation:	}	Executive Vice President
for and on behalf of:	}	ST TELECOMMUNICATIONS PTE LTD

in the presence of:

/s/ LEE YOONG KIN

Name of witness:	}	Lee Yoong Kin
NRIC No:	}	14925441

LETTER OF ACCEPTANCE

31 January 2000

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

Attn: Ms Vanessa Loh

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #06-01, # 06-05 TO #06-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

1. We refer to your letter of offer and letter Ref JTC(L)7329/30 dated 25 January 2000 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.
2. We enclose herewith a cheque for the amount of $43,298.97 and the Banker's Guarantee of $118,895.43 as security deposit as confirmation of our acceptance.
3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

/s/ SIO TAT HIANG

Name of authorised signatory:	}	Sio Tat Hiang
Designation:	}	Executive Vice President
for and on behalf of:	}	ST TELECOMMUNICATIONS PTE LTD

in the presence of:

/s/ LEE YOONG KIN

Name of witness:	}	Lee Yoong Kin
NRIC No:	}	14925441

25 Jan 2000 **CONFIDENTIAL**

Mr. Lee Yoong Kin
General Manager, OPS and Planning
ST Telecommunications Pte Ltd
51 Cuppage Road #10-11/17 StarHub Centre
Singapore 228469 (By Fax and mail)

RE: CONDITIONS OF AGREEMENT FOR THE TWO LETTERS OF OFFER FOR
1. BLK 20 AYER RAJAH CRESCENT #06-01, #06-05 TO 08 (2,021 SQM)
2. BLK 20 AYER RAJAH CRESCENT #05-05 TO 08 (1,684 SQM)

1 We refer to the two Letters of Offer dated 25 Jan 2000 for the above factory space and state the special conditions below in addition to the terms and conditions in the Letters of Offer for the above 2 sites at 3,705 sqm:

2 ST Telecommunications PL will be granted a 9-month period for the Right-of-First-Refusal (ROFR) for the remaining floor areas on 5 th and 6th floors of 20 ARC at approximately 2,295 sqm. The 9-month ROFR period will commence from the Lease Commencement Date of the above 2 sites i.e. from 1 Aug 2000. ROFR will expire on 20 Apr 2001.

3 The 3-tier rental package for the first 3-year tenancy indicated in the two Letters of Offer are granted on the condition that your company will rent two whole floors (5th and 6th floors) at 20 ARC by mid-2001. Failing which, the rental package will be adjusted to the prevailing posted rent and subject to the normal bulk discount rate (i.e. 3% for aggregate floor area exceeding 1,000 sqm end 4% for exceeding 5,000 sqm)

4 For the property management services, the Property Management Department (PMD) of Customer Service Group (CTG) has confirmed that the estimated response time to the mechanical and electrical breakdown is:

- During office hours (Mon to Fri 8:30 am to 5:30 pm and Sat from 8:30 am to 1 pm)—within 1 hour
- After office hours—within 2 hours

5 We await your written confirmation and agreement of the above by 31 Jan 2000. The acceptance of the above is in addition to the Letter of Acceptance in response to the two Letters of Offer. Thank you.

Sincerely

/s/ VANESSA LO
Vanessa Lo
Marketing & Sales Department
Jurong Town Corporation

25 January 2000

ST TELECOMMUNICATIONS PTE LTD
Blk 51 Cuppage Rd
#10-11
Singapore 229469
Singapore 229469

BY FAX @ 8350200
& AR REGISTERED

(Attn Mr Ng Hiang Cheok/Lee Yoong Kin)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE

1. We are pleased to offer a tenancy of the Premises subject to the following covenants, terms and conditions in this letter and a letter [Ref JTC(L)7329/30] dated 25 Jan 2000 and in the annexed Memorandum of Tenancy ("the Offer"):

1.01 Location

Pte Lot A19857(b), Blk 20 ("the Building") **Ayer Rajah Cres #06-01** and Pte Lot A19857(a) at #06-05 to #06-08, Ayer Rajah Industrial Estate Singapore 139964 ("the Premises") as delineated and edged in red on the plan attached to the Offer.

1.02 Term of Tenancy:

3 years ("the Term") with effect from **1 August 2000** ("the Commencement Date").

1.03 Tenancy Agreement:

Upon due acceptance of the Offer in accordance with clause 2 of this letter, you shall have entered into a tenancy agreement with us ("the Tenancy") and will be bound by the covenants, terms and conditions thereof.

In the event of any inconsistency or conflict between any covenant, term or condition of this letter and the Memorandum of Tenancy, the relevant covenant, term or condition in this letter shall prevail.

1.04 Area:

Approximately **2,021.0 square metres** (subject to survey).

1.05 Rent and Service Charge:

Rent:

(a) Discounted rate of:

(i) **$14.50** per square metre per month for the period from 1 August 2000 to 31 July 2001;

(ii) **$14.80** per square metre per month for the period from 1 August 2001 to 31 July 2002;

(iii) **$15.11** per square metre per month for the period 1 August 2002 to 31 July 2003.

(b) Normal rate of:

$15.90 per square metre per month for the period from 1 August 2000 to 31 July 2001

("Rent") to be paid without demand and in advance without deduction on the 1st day of each month of the year (i.e. 1st of January, February, March, etc.) The next payment shall be made **1 September 2000**.

Service charge:

$4.50 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.05(a) **Air-conditioning Charge:**

$0.008 per square metre per hour as charges for air-conditioning utility rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time in the same manner as the Service Charge.

1.06 **Security Deposit/Banker's Guarantee:**

You will at the time of acceptance of the Offer be required to place with us a deposit of $118,895.43 equivalent to 3 months' Rent (at the discounted rate) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (effective from **1 February 2000** to **31 January 2004**) and/or such offer form or security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to you for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the deductions so that the Security Deposit shall at all times be equal to 3 months' Rent and Service Charge.

1.07 **Mode of Payment:**

Except for the payment to be made with your letter of acceptance pursuant to clause 2 of this letter, during the Term, you shall pay Rent, Service Charge and GST by Interbank GIRO or any other mode to be determined by us.

[**Note:** Accordingly, you are to provide us with the duly completed GIRO authorization form enclosed herewith.

However, pending finalisation for the GIRO arrangement, you shall pay Rent, Service Charge and GST as they fail due by cheque].

1.08 Permitted Use:

(a) Subject to clause 1.12 of this letter, you shall commence full operations within four (4) months of the Commencement Date for the purpose of **providing full internet-based related activities including data centre, call centre, regional network management, product and software development and facilities hosting etc only** and for no other purpose whatsoever ("the Authorised Use").

(b) Thereafter, you shall maintain full and continuous operations and use and occupy the whole of the Premises for the Authorised Use.

1.09 Approvals

The Tenancy is subject to approvals being obtained from the relevant government and statutory authorities.

1.10 Possession of Premises:

(a) Keys to the Premises will be given to you six (6) months prior to the Commencement Date subject to due acceptance of the Offer ("Possession Date").

(b) From the Possession Date until the Commencement Data, you shall be deemed a licensee upon the same terms and conditions in the Tenancy.

(c) if you proceed with the Tenancy after the Commencement Date, licence fee payable from the Possession date to the Commencement Date shall be waived ("Rent-Free Period"). Should you fail to so proceed, you shall:

(i) remove everything installed by you;
(ii) reinstate the Premises to its original state and condition; and
(iii) pay us a sum equal to the prevailing market rent payable for the period from the Possession Date up to the date the installations are removed and reinstatement completed to our satisfaction.

without prejudice to any other rights and remedies we may have against you under the Tenancy or at law

1.11 Preparation and Submission of Plans:

(a) No alteration, addition, improvement, erection, installation or interference to or in the Premises or the fixtures and fittings therein is permitted without Building Control Unit [BCU(JTC)] prior written consent. Your attention is drawn to clauses 2.10 to 2.19 and 2.34 of the Memorandum of Tenancy.

(b) You will be required to prepare and submit floor layout plans of your factory in accordance with the terms of the tenancy and the 'Guide' attached. It is important that you should proceed with the preparation and submission of the plans in accordance with the procedures set out in the said 'Guide'.

(c) Should there be alteration of existing automatic fire alarm and sprinkler system installation, alteration plans shall be submitted to Building Control Unit

[BCU(JTC)] for approval on fire safety aspects. All fire alarm & sprinkler system plans must be signed by a relevant Professional Engineer, registered with the Professional Engineers Board of Singapore.

(d) Upon due acceptance of the Offer, a copy of the floor and elevation plans (transparencies) will be issued to you to assist in the preparation of the plans required herein.

(e) No work shall commence until the plans have been approved by Building Control Unit [BCU(JTC)].

(f) Kindly note that at present URA requires you to use and occupy at least sixty per cent (60%) of the gross floor area of the Premises for industrial activities and ancillary warehousing activities; and you may use and occupy the remaining gross floor area, if any, for offices, showrooms, neutral areas or communal facilities and such other uses as may be approved in writing by us and the relevant governmental and statutory authorities. Nonetheless, as provided in paragraph 1.08, you shall ensure that the Premises:

i) are used primarily for the industrial activities stipulated in the authorised use approved by us; and

ii) are not used or occupied for the purpose of offices, showrooms, storage, warehousing, industrial activities unrelated to such authorised use or for any other use unless approved in writing by us and the relevant governmental and statutory authorities.

1.12 Final inspection:

You shall ensure that final inspection by us of all installations is carried out and our approval of the same is obtained before any operations in the Premises may be commenced.

1.13 Special Conditions:

(1) **Normal (Ground & Non-ground) Floor Premises**

You shall comply and ensure compliance with the following restrictions:

(a) maximum loading capacity of the goods lifts in the Building; and

(b) maximum floor loading capacity of 10.0 kiloNewtons per square metre of the Premises on the 5 th storey of the Building PROVIDED THAT any such permitted load shall be evenly distributed.

We shall not be liable for any loss or damage that you may suffer from any subsidence or cracking of the ground floor slabs and aprons of the Building,

(2) You shall comply and ensure compliance with all notices, rules and regulations relating to the use of the Carpark (as defined in the Memorandum of Tenancy) including but not limited to:

(i) parking or placing of container, vehicles, trailers or other carriages; and

(ii) parking charges.

(3) You are to connect the mechanical ventilation system in the Premises to the switchboard installed by you, subject to clauses 2.12, 2.13 and 2.14 of the Memorandum of Tenancy.

(4) **Option for renewal of tenancy**:

(a) You may within 3 months before the expiry of the Term make a written request to us for a further term of tenancy.

(b) We may grant you a further term or tenancy of the Premises upon mutual terms to be agreed between you and us subject to the following:

(i) there shall be no breach of your obligations at the time you make your request for a further term;

(ii) our determination of revised rent, having regard to the market rent of the Premises at the time of granting the further term, shall be final;

(iii) we shall have absolute discretion to determine such covenants, terms and conditions, but excluding a covenant for renewal of tenancy; and

(iv) there shall not be any breach of your obligations at the expire of the Term.

2. Mode of Acceptance:

The Offer shall lapse if we do not receive the following by **31 January 2000**:

- Duly signed letter of acceptance **(in duplicate)** of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix)**
- Payment of the sum set out in clause 4.
- Duly completed GIRO authorized form.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

	Amount		+3% GST
1st Year:			
Rent at $14.50 psm per month on 2,021 sqm for the period 1 August 2000 to 31 August 2000	$29,304.50		
Service Charge at $4.50 psm per month on 2,021 sqm for the period 1 August 2000 to 31 August 2000	$ 9,094.50	$ 38,399.00	$1,151.97
Deposit equivalent to three months' rent (at the discounted rate payable in the third year of the Term) and service charge [or Banker's Guarantee provided in accordance with subparagraph 1.06 above]		$118,895.43	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC on your behalf		$ 3,748.00	
Sub-Total Payable		$ 161,042.43	$1,151.97
Add: GST + 3%		$ 1,151.97	
Total Payable inclusive of GST		$ 162,194.40	

5. Rent-Free Period:

As the Commencement Date will not be deferred, we advise you to accept the Offer as soon as possible and to collect the keys to the Premises on the scheduled date in order to maximize the Rent-Free Period referred to in clause 1.10(c) of this letter.

6. Variation to the Tenancy

The letter and the Memorandum of Tenancy constitute the full terms and conditions governing the Offer and no terms or representation or otherwise, whether express or implied, shall form part of the Offer other than what is contained herein. Any variation, modification, amendment, deletion, addition or otherwise of the covenants, terms and conditions of the Offer shall not be enforceable unless agreed by both parties and reduced in writing by us.

7. Season Parking:

Season parking tickets for car parking lots within the Estate can be purchased from the JTC Zone Office serving the Estate (Contact no. of the **East Zone Office** is: **2999405**). Please note that the number of season parking ticket(s) that can be purchased by you will depend on eligibility rules set out by us.

8. Application for Approvals, Utilities etc.

Upon your acceptance of the covenants, terms and conditions of the Offer, you are advised to proceed expeditiously as follows:

8.01 Preliminary Clearance:

Company with the requirements of the Chief Engineer (Central Building Plan Unit), Pollution Control Department and/or other departments pursuant to your application/s for preliminary clearance. (Please note that we have referred your application to the relevant department/s)

8.02 Discharge of Trade Effluence:

Complete the attached Application for Permission to Discharge Trade Effluent into Public Sewer and return the application form direct to the Head, Pollution Control Department, Ministry of Environment Building, 40 Scotts Road. Singapore 228231 (Telephone No. 7327733).

8.03 Electricity:

Engage a registered electrical consultant or competent contractor to submit three sets of electrical single-line diagrams to and in accordance with the requirements of our Property Support Department (PSD), Customer Services Group, JTC East Zone Office for endorsement before an application is made to the Power Supply Pte Ltd to open an account for electricity connection. Please contact our Property Support Department (PSD) at Blk 25 Kallang Avenue #05-01 Kallang Basin Industrial Estate Singapore 339416 direct for their requirements.

8.04 Water:

Submit four copies of sketch plans, prepared by a licensed plumber, showing the section and layout of the plumbing, to our Building Control Unit [BCU(JTC)] for approval prior to the issue of a letter to Water Conservation Department, Public Utilities Board to assist you in your application for a water sub meter.

8.05 Telephone:

Apply direct to Singapore Telecommunications Ltd for all connections.

8.06 Automatic Fire Alarm System (Incorporating Heat Detector)

Engage a registered electrical consultant/professional engineer to submit two sets of fire alarm, drawings, indicating the exiting fixtures if any, the proposed modifications of the fire alarm and the layout of machinery, etc to and in accordance with the requirements of our Building Control Unit [BCU(JTC)]. Please contact our Building Control Unit [BCU(JTC)] at 301 Jurong Town Hall Road (3 rd level) Singapore 609431 direct for further requirements.

8.07 Factory Inspectorate

Complete and return direct to Chief Inspector of Factories the attached form, “Particulars to be submitted by occupiers or Intending Occupiers of Factories”.

Yours faithfully

/s/ VANESSA LOH
Vanessa Loh
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Encl

Draft of Letter of Acceptance

(Please use company's letterhead and **In Duplicate**)

Date: (To be dated on the day this letter is forwarded to JTC)

BY HAND

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

(Attn: Vanessa Loh)

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #06-01, #06-05 TO # 06-08 AYER RAJAH INDUSTRIAL ESTATE Singapore 139964

1 We refer to your letter of offer and letter [Ref JTC(L)7329/30] dated **[25 January 2000]** for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of **[$162,194.40]** as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of **[$43,298.97]** and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of:

[ST TELECOMMUNICATIONS PTE LTD]

in the presence of:

[Name of witness:]
[NRIC No:]

*Please omit if not applicable

SPECIMEN GUARANTEE FORM GUARANTEE

TO: JURONG TOWN CORPORATION
JURONG TOWN HALL
JURONG TOWN HALL ROAD
SINGAPORE 609431

WHEREAS:

[ST TELECOMMUNICATIONS PTE LTD] of [Blk 51 Cuppage Rd #10-11 Singapore 229469] ("the Tenant") is a tenant of the premises known as **[Blk 20 Ayer Rajah Cres #06-01, To #06-05 To #06-08 Ayer Rajah Industrial Estate Singapore 139964]** ("the Premises") pursuant to a letter of offer and letter [Ref JTC(L)7329/30] dated **[25 January 2000]** from Jurong Town Corporation ("JTC") to and duly accepted by the Tenant ("the Tenancy", which expression shall include any written amendments made to the Tenancy from time to time).

IN CONSIDERATION OF your agreeing to grant the Tenancy and pursuant to a term of the Tenancy, we, the undersigned, hereby unconditionally undertake to pay to you from time to time on first demand the sum of aggregate sums not exceeding **[$118,895.43]** ("the Full Guaranteed Sum") if accompanied by your statement that the Tenant is in breach of any of the Tenant's obligations to you under the Tenancy and that the amount demanded is due and payable to you and remains unpaid provided that our liability under this Guarantee shall not exceed the Full Guaranteed Sum.

Our liability under this Guarantee shall be that of a principal debtor and not by way of surety and such liability shall not be discharged or affected by any event, act or omission whereby our liability would have been discharged if we had been a surety.

The Guarantee is valid from **[1 February 2000]** and shall expire on **[31 January 2004]** ("the expiry period") and our liability hereunder shall cease in respect of any claims made after expiry period.

Notwithstanding that this Guarantee may not have expired, our liability hereunder shall cease forthwith upon our paying to you the Full Guaranteed Sum to be held by you as a security deposit under the Tenancy.

Dated

[Signature, names and designations of authorised signatories of Bank/Finance Company and rubber stamp of Bank/Finance Company]

[ALLOCATION PLAN]

25 January 2000

ST TELECOMMUNICATIONS PTE LTD
Blk 51 Cuppage Rd
#10-11
Singapore 229469
Singapore 229469

BY FAX @ 8350200
& AR REGISTERED

(Attn Mr Ng Hiang Cheok/Lee Yoong Kin)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE

1. We are pleased to offer a tenancy of the Premises subject to the following covenants, terms and conditions in this letter and a letter [Ref JTC(L)7329/30] dated 25 Jan 2000 and in the annexed Memorandum of Tenancy ("the Offer"):

1.01 Location

Pte Lot A19857(b), Blk 20 ("the Building") **Ayer Rajah Cres #05-05 to #05-08, Ayer Rajah Industrial Estate Singapore 139964** ("the Premises") as delineated and edged in red on the plan attached to the Offer.

1.02 Term of Tenancy:

3 years ("the Term") with effect from **1 August 2000** ("the Commencement Date").

1.03 Tenancy Agreement:

Upon due acceptance of the Offer in accordance with clause 2 of this letter, you shall have entered into a tenancy agreement with us ("the Tenancy") and will be bound by the covenants, terms and conditions thereof.

In the event of any inconsistency or conflict between any covenant, term or condition of this letter and the Memorandum of Tenancy, the relevant covenant, term or condition in this letter shall prevail.

1.04 Area:

Approximately **1,684.0 square metres** (subject to survey).

1.05 Rent and Service Charge:

Rent:

(a) Discounted rate of:

(i) **$14.50** per square metre per month for the period from 1 August 2000 to 31 July 2001;

(ii) **$14.80** per square metre per month for the period from 1 August 2001 to 31 July 2002;

(iii) **$15.11** per square metre per month for the period 1 August 2002 to 31 July 2003.

(b) Normal rate of:

$15.90 per square metre per month for the period from 1 August 2000 to 31 July 2001

("Rent") to be paid without demand and in advance without deduction on the 1st day of each month of the year (i.e. 1st of January, February, March, etc.) The next payment shall be made **1 September 2000**.

Service charge:

$4.50 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.05(a) **Air-conditioning Charge:**

$0.008 per square metre per hour as charges for air-conditioning utility rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time in the same manner as the Service Charge.

1.06 **Security Deposit/Banker's Guarantee:**

You will at the time of acceptance of the Offer be required to place with us a deposit of $99,069.72 equivalent to 3 months' Rent (at the discounted rate) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (effective from **1 February 2000** to **31 January 2004**) and/or such offer form or security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to you for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the deductions so that the Security Deposit shall at all times be equal to 3 months' Rent and Service Charge.

1.07 **Mode of Payment:**

Except for the payment to be made with your letter of acceptance pursuant to clause 2 of this letter, during the Term, you shall pay Rent, Service Charge and GST by Interbank GIRO or any other mode to be determined by us.

[**Note:** Accordingly, you are to provide us with the duly completed GIRO authorization form enclosed herewith.

However, pending finalisation for the GIRO arrangement, you shall pay Rent, Service Charge and GST as they fail due by cheque].

1.08 Permitted Use:

(a) Subject to clause 1.12 of this letter, you shall commence full operations within four (4) months of the Commencement Date for the purpose of **providing full internet-based related activities including data centre, call centre, regional network management, product and software development and facilities hosting etc only** and for no other purpose whatsoever ("the Authorised Use").

(b) Thereafter, you shall maintain full and continuous operations and use and occupy the whole of the Premises for the Authorised Use.

1.09 Approvals

The Tenancy is subject to approvals being obtained from the relevant government and statutory authorities.

1.10 Possession of Premises:

(a) Keys to the Premises will be given to you six (6) months prior to the Commencement Date subject to due acceptance of the Offer ("Possession Date").

(b) From the Possession Date until the Commencement Data, you shall be deemed a licensee upon the same terms and conditions in the Tenancy.

(c) if you proceed with the Tenancy after the Commencement Date, licence fee payable from the Possession date to the Commencement Date shall be waived ("Rent-Free Period"). Should you fail to so proceed, you shall:

(i) remove everything installed by you;

(ii) reinstate the Premises to its original state and condition; and

(iii) pay us a sum equal to the prevailing market rent payable for the period from the Possession Date up to the date the installations are removed and reinstatement completed to our satisfaction.

without prejudice to any other rights and remedies we may have against you under the Tenancy or at law

1.11 Preparation and Submission of Plans:

(a) No alteration, addition, improvement, erection, installation or interference to or in the Premises or the fixtures and fittings therein is permitted without Building Control Unit [BCU(JTC)] prior written consent. Your attention is drawn to clauses 2.10 to 2.19 and 2.34 of the Memorandum of Tenancy.

(b) You will be required to prepare and submit floor layout plans of your factory in accordance with the terms of the tenancy and the 'Guide' attached. It is important that you should proceed with the preparation and submission of the plans in accordance with the procedures set out in the said 'Guide'.

(c) Should there be alteration of existing automatic fire alarm and sprinkler system installation, alteration plans shall be submitted to Building Control Unit

[BCU(JTC)] for approval on fire safety aspects. All fire alarm & sprinkler system plans must be signed by a relevant Professional Engineer, registered with the Professional Engineers Board of Singapore.

(d) Upon due acceptance of the Offer, a copy of the floor and elevation plans (transparencies) will be issued to you to assist in the preparation of the plans required herein.

(e) No work shall commence until the plans have been approved by Building Control Unit [BCU(JTC)].

(f) Kindly note that at present URA requires you to use and occupy at least sixty per cent (60%) of the gross floor area of the Premises for industrial activities and ancillary warehousing activities; and you may use and occupy the remaining gross floor area, if any, for offices, showrooms, neutral areas or communal facilities and such other uses as may be approved in writing by us and the relevant governmental and statutory authorities. Nonetheless, as provided in paragraph 1.08, you shall ensure that the Premises:

i) are used primarily for the industrial activities stipulated in the authorised use approved by us; and

ii) are not used or occupied for the purpose of offices, showrooms, storage, warehousing, industrial activities unrelated to such authorised use or for any other use unless approved in writing by us and the relevant governmental and statutory authorities.

1.12 Final inspection:

You shall ensure that final inspection by us of all installations is carried out and our approval of the same is obtained before any operations in the Premises may be commenced.

1.13 Special Conditions:

(1) **Normal (Ground & Non-ground) Floor Premises**

You shall comply and ensure compliance with the following restrictions:

(a) maximum loading capacity of the goods lifts in the Building; and

(b) maximum floor loading capacity of 10.0 kiloNewtons per square metre of the Premises on the 5 th storey of the Building PROVIDED THAT any such permitted load shall be evenly distributed.

We shall not be liable for any loss or damage that you may suffer from any subsidence or cracking of the ground floor slabs and aprons of the Building,

(2) You shall comply and ensure compliance with all notices, rules and regulations relating to the use of the Carpark (as defined in the Memorandum of Tenancy) including but not limited to:

(i) parking or placing of container, vehicles, trailers or other carriages; and

(ii) parking charges.

(3) You are to connect the mechanical ventilation system in the Premises to the switchboard installed by you, subject to clauses 2.12, 2.13 and 2.14 of the Memorandum of Tenancy.

(4) **Option for renewal of tenancy**:

(a) You may within 3 months before the expiry of the Term make a written request to us for a further term of tenancy.

(b) We may grant you a further term or tenancy of the Premises upon mutual terms to be agreed between you and us subject to the following:

(i) there shall be no breach of your obligations at the time you make your request for a further term;

(ii) our determination of revised rent, having regard to the market rent of the Premises at the time of granting the further term, shall be final;

(iii) we shall have absolute discretion to determine such covenants, terms and conditions, but excluding a covenant for renewal of tenancy; and

(iv) there shall not be any breach of your obligations at the expire of the Term.

2. Mode of Acceptance:

The Offer shall lapse if we do not receive the following by **31 January 2000**:

- Duly signed letter of acceptance **(in duplicate)** of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix)**
- Payment of the sum set out in clause 4.
- Duly completed GIRO authorized form.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

	Amount		+3% GST
1st Year:			
Rent at $14.50 psm per month on 1,684 sqm for the period 1 August 2000 to 31 August 2000	$24,418.00		
Service Charge at $4.50 psm per month on 1,684 sqm for the period 1 August 2000 to 31 August 2000	$ 7,578.00	$ 31,996.00	$959.88
Deposit equivalent to three months' rent (at the discounted rate payable in the third year of the Term) and service charge [or Banker's Guarantee provided in accordance with subparagraph 1.06 above]		$ 99,069.72	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC on your behalf		$ 3,124.00	
Sub-Total Payable		$ 134,189.72	$959.88
Add: GST + 3%		$ 959.88	
Total Payable inclusive of GST		$135,149.60	

5. Rent-Free Period:

As the Commencement Date will not be deferred, we advise you to accept the Offer as soon as possible and to collect the keys to the Premises on the scheduled date in order to maximize the Rent-Free Period referred to in clause 1.10(c) of this letter.

6. Variation to the Tenancy

The letter and the Memorandum of Tenancy constitute the full terms and conditions governing the Offer and no terms or representation or otherwise, whether express or implied, shall form part of the Offer other than what is contained herein. Any variation, modification, amendment, deletion, addition or otherwise of the covenants, terms and conditions of the Offer shall not be enforceable unless agreed by both parties and reduced in writing by us.

7. Season Parking:

Season parking tickets for car parking lots within the Estate can be purchased from the JTC Zone Office serving the Estate (Contact no. of the **East Zone Office** is: **2999405**). Please note that the number of season parking ticket(s) that can be purchased by you will depend on eligibility rules set out by us.

8. Application for Approvals, Utilities etc.

Upon your acceptance of the covenants, terms and conditions of the Offer, you are advised to proceed expeditiously as follows:

8.01 Preliminary Clearance:

Company with the requirements of the Chief Engineer (Central Building Plan Unit), Pollution Control Department and/or other departments pursuant to your application/s for preliminary clearance. (Please note that we have referred your application to the relevant department/s)

8.02 Discharge of Trade Effluence:

Complete the attached Application for Permission to Discharge Trade Effluent into Public Sewer and return the application form direct to the Head, Pollution Control Department, Ministry of Environment Building, 40 Scotts Road. Singapore 228231 (Telephone No. 7327733).

8.03 Electricity:

Engage a registered electrical consultant or competent contractor to submit three sets of electrical single-line diagrams to and in accordance with the requirements of our Property Support Department (PSD), Customer Services Group, JTC East Zone Office for endorsement before an application is made to the Power Supply Pte Ltd to open an account for electricity connection. Please contact our Property Support Department (PSD) at Blk 25 Kallang Avenue #05-01 Kallang Basin Industrial Estate Singapore 339416 direct for their requirements.

8.04 Water:

Submit four copies of sketch plans, prepared by a licensed plumber, showing the section and layout of the plumbing, to our Building Control Unit [BCU(JTC)] for approval prior to the issue of a letter to Water Conservation Department, Public Utilities Board to assist you in your application for a water sub meter.

8.05 Telephone:

Apply direct to Singapore Telecommunications Ltd for all connections.

8.06 Automatic Fire Alarm System (Incorporating Heat Detector)

Engage a registered electrical consultant/professional engineer to submit two sets of fire alarm, drawings, indicating the exiting fixtures if any, the proposed modifications of the fire alarm and the layout of machinery, etc to and in accordance with the requirements of our Building Control Unit [BCU(JTC)]. Please contact our Building Control Unit [BCU(JTC)] at 301 Jurong Town Hall Road (3 rd level) Singapore 609431 direct for further requirements.

8.07 Factory Inspectorate

Complete and return direct to Chief Inspector of Factories the attached form, “Particulars to be submitted by occupiers or Intending Occupiers of Factories”.

Yours faithfully

/s/ VANESSA LOH

Vanessa Loh
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Encl

Draft of Letter of Acceptance

(Please use company's letterhead and **In Duplicate**)

Date: (To be dated on the day this letter is forwarded to JTC)

BY HAND

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

(Attn: Vanessa Loh)

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #05-05 To # 05-08 AYER RAJAH INDUSTRIAL ESTATE Singapore 139964

1 We refer to your letter of offer and letter [Ref JTC(L)7329/30] dated **[25 January 2000]** for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of **[$135,149.60]** as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of **[$36,079.88]** and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of:

[ST TELECOMMUNICATIONS PTE LTD]

in the presence of:

[Name of witness:]
[NRIC No:]

*Please omit if not applicable

Exhibit 10.63

Date: 16 February 2001

Marketing & Sales Department
JTC Corporation
The JTC Summit
8 Jurong Town Hall Road
Singapore 609434

Attn: Ms LOH LI YOON

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 28 AYER RAJAH CRESCENT #03-01 TO #03-04 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139959

We refer to your letter of offer dated 18 January 2001 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein. We enclose herewith a cheque for the sum of the amount of $42,006.13 except the Banker's Guarantee as security deposit as confirmation of our acceptance, and we shall send in the Banker's Guarantee by hand within a week. In addition, we also enclose herewith a Letter of Authorisation as requested by you for your information and record. Please find also attached a e-mail correspondence for your reference.

This copy and e-mail correspondence shall be returned to I-STT upon receipt of our Banker's Guarantee.

/s/ LOU HUNG HOR

Lou Hung Hor
Asst Project Manager
For and on behalf of:

[SYMBOL STAMPED *I-STT PTE LTD]

i-STT PTE LTD

18 January 2001

I-STT PTE LTD
Blk 20 Ayer Rajah Crescent
#05-08 Ayer Rajah Industrial Estate
Singapore 139964

BY LUM

(Attn: Mr Lee Yoong Kin)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE

1. We are pleased to offer a tenancy of the Premises subject to the following covenants, terms and conditions in this letter and in the annexed Memorandum of Tenancy ("the Offer"):

1.01 Location:

Pte Lot A19857E, Blk 28 ("the Building") Ayer Rajah Crescent #03-01 To #03-04, Ayer Rajah Industrial Estate Singapore 139959 ("the Premises") as delineated and edged in red on the plan attached to the Offer.

1.02 Term of Tenancy:

3 years ("the Term") with effect from 16 August 2001 ("the Commencement Date").

1.03 Tenancy Agreement:

Upon due acceptance of the Offer in accordance with clause 2 of this letter, you shall have entered into a tenancy agreement with US ("the Tenancy") and will be bound by the covenants, terms and conditions thereof.

In the event of any inconsistency or conflict between any covenant, term or condition of this letter and the Memorandum of Tenancy, the relevant covenant, term or condition in this letter shall prevail.

1.04 Area:

Approximately 2,416.00 square metres (subject to survey).

1.05 Rent and Service Charge:

For Discounted Rent:

(a) Discounted rate of $12.69 psm pm for so long as the Tenant shall occupy by way of tenancy an aggregate floor area of 10,000 square metres in

the Building or in the various flatted factories belonging to the Landlord, and

(b) Normal rate of $14.10 psm pm in the event that the said aggregate floor area occupied is at any time reduced to below 10,000 square metre (when the discount shall be totally withdrawn) with effect from the date of reduction in the said aggregate floor,

("Rent") to be paid without demand and in advance without deduction on the 1st day of each month of the year (i.e. 1st of January, February, March, etc.). The next payment shall be made on 1 September 2001.

Service charge:

$2.75 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.06 Security Deposit/Banker's Guarantee:

You will at the time of acceptance of the Offer be required to place with us a deposit of $111,909.12 equivalent to 3 months' Rent (at the discounted rate) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (effective from **16 February 2001** to **15 February 2005**) and/or such offer form or security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to you for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the deductions so that the Security Deposit shall at all times be equal to 3 months' Rent and Service Charge.

1.07 Mode of Payment:

Where letter of authorization is required due to limit set by company

You have an existing GIRO account with us, the limit of which has to be increased to cover all the aforesaid payments. Please write to your Banker to authorize the same ("the letter of authorization") and let us have a copy thereof in accordance with the Mode of Acceptance herein.

1.08 Permitted Use:

(a) Subject to clause 1.12 of this letter, you shall commence full operations within four (4) months of the Commencement Date for the purpose of **Internet-related and support activities for data centre, call centre, regional network management, product and software development and facilities only** and for no other purpose whatsoever ("the Authorised Use").

(b) Thereafter, you shall maintain full and continuous operations and use and occupy the whole of the Premises for the Authorised Use.

(c) Subject to clauses (a) and (b) above, you shall use and occupy at least sixty percent (60%) of the gross floor area of the Premises for industrial activities and ancillary stores, and use and occupy the remaining gross floor area, if any, for offices, neutral areas, communal facilities and such other uses as may be approved in writing by us and the relevant governmental and statutory authorities PROVIDED THAT you shall not use and occupy the Premises for the purpose of commercial office and storage unrelated to the Authorised Use.

1.09 Approvals

The Tenancy is subject to approvals being obtained from the relevant government and statutory authorities.

1.10 Possession of Premises:

(a) Keys to the Premises will be given to you six (6) months prior to the Commencement Date subject to due acceptance of the Offer ("Possession Date").

(b) From the Possession Date until the Commencement Data, you shall be deemed a licensee upon the same terms and conditions in the Tenancy.

(c) if you proceed with the Tenancy after the Commencement Date, licence fee payable from the Possession date to the Commencement Date shall be waived ("Rent-Free Period"). Should you fail to so proceed, you shall:

(i) remove everything installed by you;
(ii) reinstate the Premises to its original state and condition; and
(iii) pay us a sum equal to the prevailing market rent payable for the period from the Possession Date up to the date the installations are removed and reinstatement completed to our satisfaction.

without prejudice to any other rights and remedies we may have against you under the Tenancy or at law.

1.11 Preparation and Submission of Plans:

(a) No alteration, addition, improvement, erection, installation or interference to or in the Premises or the fixtures and fittings therein is permitted without Building Control Unit [BCU(JTC Corporation)] prior written consent. Your attention is drawn to clauses 2.10 to 2.19 and 2.34 of the Memorandum of Tenancy.

(b) You will be required to prepare and submit floor layout plans of your factory and plans of the air-conditioning works in accordance with the terms of the tenancy and the 'Guide' attached. It is important that you should proceed with the preparation and submission of the plans in accordance with the procedures set out in the said 'Guide'.

(c) Should there be alteration of existing automatic fire alarm and sprinkler system installation, alteration plans shall be submitted to Building Control Unit [BCU(JTC Corporation)] for approval on fire safety aspects. All air-conditioning, fire alarm & sprinkler system plans must be signed by a relevant Professional Engineer, registered with the Professional Engineers Board of Singapore.

(d) Upon due acceptance of the Offer, a copy of the floor and elevation plans (transparencies) will be issued to you to assist in the preparation of the plans required herein.

(e) No work shall commence until the plans have been approved by Building Control Unit [BCU(JTC Corporation)].

1.12 Final inspection:

You shall ensure that final inspection by us of all installations is carried out and our approval of the same is obtained before any operations in the Premises may be commenced.

1.13 Special Conditions:

(1) **Normal (Ground & Non-ground) Floor Premises**

You shall comply and ensure compliance with the following restrictions:

(a) maximum loading capacity of the goods lifts in the Building; and

(b) maximum floor loading capacity of **12.50** kiloNewtons per square metre of the Premises on the storey of the Building PROVIDED THAT any such permitted load shall be evenly distributed.

We shall not be liable for any loss or damage that you may suffer from any subsidence or cracking of the ground floor slabs and aprons of the Building.

(2) **Option for renewal of tenancy**:

(a) You may within 3 months before the expiry of the Term make a written request to us for a further term of tenancy.

(b) We may grant you a further term or tenancy of the Premises upon mutual terms to be agreed between you and us subject to the following:

(i) there shall be no breach of your obligations at the time you make your request for a further term;

(ii) our determination of revised rent, having regard to the market rent of the Premises at the time of granting the further term, shall be final;

(iii) we shall have absolute discretion to determine such covenants, terms and conditions, but excluding a covenant for renewal of tenancy; and

(iv) there shall not be any breach of your obligations at the expire of the Term.

2. Mode of Acceptance:

The Offer shall lapse if we do not receive the following by **15 February 2001**:

- Duly signed letter of acceptance **(in duplicate)** of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix)**
- Payment of the sum set out in clause 4.
- A copy of the letter of authorization from your Banker.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

	Amount		+3% GST
Rent at $12.69 per square metre per month on 2,416 square metres for the period 16 August 2001 to 15 September 2001	$30,659.04		
Service Charge at $2.75 per square metre per month on 2,416 square metre for the period 16 August 2001 to 15 September 2001	$ 6,644.00	$ 37,303.04	$1,119.09
Deposit equivalent to three months' rent service charge (or Banker's Guarantee provided in accordance with sub-paragraph 1.06 above)		$ 111,909.12	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC Corporation on your behalf		$ 3,584.00	
Sub-Total Payable		$152,796.16	$1,119.09
Add: GST + 3%		$ 1,119.09	
Total Payable inclusive of GST		**$ 153,915.25**	

5. Rent-Free Period:

As the Commencement Date will not be deferred, we advise you to accept the Offer as soon as possible and to collect the keys to the Premises on the scheduled date in order to maximize the Rent-Free Period referred to in clause 1.10(c) of this letter.

6. Variation to the Tenancy

The letter and the Memorandum of Tenancy constitute the full terms and conditions governing the Offer and no terms or representation or otherwise, whether express or implied, shall form part of the Offer other than what is contained herein. Any variation, modification, amendment, deletion, addition or otherwise of the covenants, terms and conditions of the Offer shall not be enforceable unless agreed by both parties and reduced in writing by us.

7. Season Parking:

Season parking tickets for car parking lots within the Estate can be purchased from the JTC Zone Office serving the Estate (Contact no. of the South Zone Office is: 3629501 or 6654628 respectively). Please note that the number of season parking ticket(s) that can be purchased by you will depend on eligibility rules set out by us.

8. Application for Approvals, Utilities etc.

Upon your acceptance of the covenants, terms and conditions of the Offer, you are advised to proceed expeditiously as follows:

8.01 Preliminary Clearance:

Company with the requirements of the Chief Engineer (Central Building Plan Unit), Pollution Control Department and/or other departments pursuant to your application/s for preliminary clearance. (Please note that we have referred your application to the relevant department/s)

8.02 Discharge of Trade Effluence:

Complete the attached Application for Permission to Discharge Trade Effluent into Public Sewer and return the application form direct to the Head, Pollution Control Department, Ministry of Environment Building, 40 Scotts Road. Singapore 228231 (Telephone No. 7327733).

8.03 Electricity:

Engage a registered electrical consultant or competent contractor to submit three sets of electrical single-line diagrams to and in accordance with the requirements of our Property Support Department (PSD), Customer Services Group, JTC East Zone Office for endorsement before an application is made to the Power Supply Pte Ltd to open an account for electricity connection. Please contact our Property Support Department (PSD) at Blk 25 Kallang Avenue #05-01 Kallang Basin Industrial Estate Singapore 339416 direct for their requirements.

8.04 Water:

Submit four copies of sketch plans, prepared by a licensed plumber, showing the section and layout of the plumbing, to our Building Control Unit [BCU(JTC Corporation)] for approval prior to the issue of a letter to Water Conservation Department, Public Utilities Board to assist you in your application for a water sub-meter.

8.05 Telephone:

Apply direct to Singapore Telecommunications Ltd for all connections.

8.06 Automatic Fire Alarm System (Incorporating Heat Detector)

Engage a registered electrical consultant/professional engineer to submit two sets of fire alarm, drawings, indicating the exiting fixtures if any, the proposed modifications of the fire alarm and the layout of machinery, etc to and in accordance with the requirements of our Building Control Unit [BCU(JTC Corporation)]. Please contact our Building Control Unit [BCU(JTC Corporation)] at The JTC Summit, One-Step Centre (1st level) 8 Jurong Town Hall Road Singapore 609434 direct for further requirements.

8.07 Factory Inspectorate

Complete and return direct to Chief Inspector of Factories the attached form, "Particulars to be submitted by occupiers or Intending Occupiers of Factories".

Yours faithfully

/s/ LOH LI YOON
LOH LI YOON (Ms)
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JTC CORPORATION
Encl

SPECIMEN GUARANTEE FORM GUARANTEE

TO: JTC CORPORATION
THE JTC SUMMIT
8 JURONG TOWN HALL ROAD
SINGAPORE 609434

WHEREAS:

[I-STT PTE LTD] of [Blk 20 Ayer Rajah CresceNT #05-08 Ayer Rajah Industrial Estate Singapore 139964] ("the Tenant") is a tenant of the premises known as [Blk 28 Ayer Rajah Crescent #03-01 To #03-04 Ayer Rajah Industrial Estate Singapore 139959] ("the Premises") pursuant to a letter of offer and letter dated [18 January 2001] from JTC CORPORATION ("JTC") to and duly accepted by the Tenant ("the Tenancy", which expression shall include any written amendments made to the Tenancy from time to time).

IN CONSIDERATION OF your agreeing to grant the Tenancy and pursuant to a term of the Tenancy, we, the undersigned, hereby unconditionally undertake to pay to you from time to time on first demand the sum of aggregate sums not exceeding **[$111,909.12]** ("the Full Guaranteed Sum") if accompanied by your statement that the Tenant is in breach of any of the Tenant's obligations to you under the Tenancy and that the amount demanded is due and payable to you and remains unpaid provided that our liability under this Guarantee shall not exceed the Full Guaranteed Sum.

Our liability under this Guarantee shall be that of a principal debtor and not by way of surety and such liability shall not be discharged or affected by any event, act or omission whereby our liability would have been discharged if we had been a surety.

This Guarantee is valid from [16 February 2001] and shall expire on [15 February 2005] ("the expiry period") and our liability hereunder shall cease in respect of any claims made after expiry period.

Notwithstanding that this Guarantee may not have expired, our liability hereunder shall cease forthwith upon our paying to you the Full Guaranteed Sum to be held by you as a security deposit under the Tenancy.

Dated

[Signature, names and designations of authorised signatories of Bank/Finance Company and rubber stamp of Bank/Finance Company]

Draft of Letter of Acceptance

(Please use company's letterhead and **In Duplicate)**

Date: <To be dated on the day this
letter is forwarded to JTC Corporation>

Marketing & Sales Department **BY HAND**
JTC Corporation
The JTC Summit
8 Jurong Town Hall Road
Singapore 609434

(Attn: Ms LOH LI YOON)

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 28 AYER RAJAH CRESCENT #03-01 To # 03-04 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139959|

1 We refer to your letter of offer and letter dated **[18 January 2001]** for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of **[$153,915.25]** as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of **[$42,006.13]** and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a Letter of Authorisation as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of:

[I-STT PTE LTD]
in the presence of:

[Name of witness:]
[NRIC No:]

*Please omit if not applicable

Date: 28th of November, 2001

TO: JTC Corporation
Customer Service Group
Lease Management & Service Delivery Dept
8 Jurong Town Hall Road
Singapore 609434

Attention: Ms. Lai Get Luan

Dear Madam

PREMATURE PARTIAL TERMINATION OF TENANCY IN RESPECT OF PREMISES KNOWS AS SITE A20961 AT 28 AYER RAJAH CRESCENT #03-03/04 (AREA: 1,100SQM)

1. We refer to your letter dated 12 October 2001 & 27 November 2001 and hereby accept all terms and conditions stated in the said letters.

2. We enclosed herewith a cheque $515/- being administrative fee for the premature partial termination of tenancy.

/s/ LEE YOONG KIN

Lee Yoong Kin
Managing Director
i-STT Pte Ltd

12 October 2001

Mr. Walter Koh
I-STT Pte Ltd
20 Ayer Rajah Crescent
#05-08
Singapore 139964

Dear Mr. Koh

PARTIAL PREMATURE TERMINATION OF TENANCY IN RESPECT OF PREMISES KNOWN AS SITE A20961 (AREA: 1,208.00 SQUARE METRES) AT 28, AYER RAJAH CRESCENT, #03-03/04, SINGAPORE (139959)

1 We refer to your e-mail dated 27 September 2001.

2 We note that you do not intend to continue with the tenancy of the aforesaid premises. We are agreeable to a partial premature termination of the said tenancy in respect of 28, AYER RAJAH CRESCENT, #03-03/04, SINGAPORE (139959) subject to your compliance with the following terms and procedure of vacation of the premises:

(a) You shall give the Corporation at least 3 months' advance written notice of your intention to terminate the tenancy prematurely. Since your e-mail dated 27 September 2001 is treated as sufficient notification, your tenancy in respect of 28, AYER RAJAH CRESCENT, #03-03/04, SINGAPORE (139959) shall terminate on 26 December 2001 and rent and service charge shall be payable by you until the date.

(b) You shall settle all outstanding arrears and other charges before vacation of the premises.

(c) You are required to pay an administrative fee of $500/- plus $15/- being 3% GST totaling $515/- for the partial premature termination of the tenancy of the premises.

(d) You shall bear and pay the Goods and Services Tax which the Government has introduced on 1st April 94. The said tax based on the prevailing tax rate, is borne by you and is calculated by reference to the amount of rent, service charge and any other sums payable by you to the Corporation. The Corporation as collecting agent for the government shall

collect the said tax from you together with the rent/ service charge without demand on the 1st day of each calendar month of year (ie 1st days for January, February, March, etc) in accordance with the applicable laws and regulations.

(e) You are required to reinstate the premises to its original state and to the satisfaction of the Corporation before vacation:

(i) A joint inspection will be held prior to our acceptance of the keys to the premises.

(ii) If it is discovered at the time of inspection that reinstatement works have not been carried out to the satisfaction of the Corporation, you shall pay for the cost of the reinstatement, in addition to the rental and other charges you shall be liable for in respect of the premises for the period after the date of termination of your tenancy to the date full reinstatement of the premises has been completed by you/our contractor to the satisfaction of the Corporation in accordance with Clause 2(34) of your said Tenancy Agreement.

(f) You are to deliver up vacant possession of the abovesaid premises fully reinstated and return the keys to the premises to our Property Executive-in-charge of th building at the latest on the date of termination, failing which revised rental and other charges will continue to be levied and recoverable from you.

(g) If the incoming tenant (if any) decides to take over your fixtures and fittings ("the installations") from you and accepts the above premises in its existing state and condition, and if they will also furnish the Corporation with a letter of undertaking, before they take possession of the installations from you, to reinstate the premises to its original state and condition prior to the existence of the installations and to the satisfaction of the Corporation upon acceptance/expire/earlier determination of their tenancy, we are prepared to waive the usual requirement that you reinstate the premises, subject to the following conditions:

(i) only installation in respect of which plans have previously been submitted and approved by the Corporation and which comply with the said plans may be taken over by the incoming tenant;

(ii) in addition, the installations to be taken over shall have to comply fully with all building guidelines of the Building Control Division prevailing at the time of termination of your tenancy.

(iii) if the incoming tenant shall refuse or fail to take over the installations or any part thereof, or to accept the premises in its existing state or condition, or to furnish the aforesaid undertaking,

then you shall forthwith reinstate the premises to its original state and condition, in accordance with Clauses 2(33) and 2(34) of the Tenancy Agreement executed by you.

(iv) in the latter event, a joint inspection shall be carried out between our Property Executive-in-charge of the building and your representative prior to our acceptance of the keys to the premises from you; and (5) if it is discovered at the time of inspection that reinstatement works have not been carried out to the satisfaction of the Corporation, you shall pay for the cost of the reinstatement, in addition to the rental and other charges you shall be liable for in respect of the premises for the period after the date of termination of your tenancy to the date full reinstatement of the premises has been completed by your/our contractor to the satisfaction of the Corporation in accordance with Clause 2(34) of your said Tenancy Agreement.

(h) You must allow and arrange with our Property Management Department, not less than two weeks before the termination date, for the erection of partition wall between units #03-02 and #03-03. You can contact our Property Executive, Mr. Tan Slew Hem (Tel. No. 7730230) concerning the arrangement.

3 The letter of offer dated 18 January 2001 shall with effect from the date of termination of the tenancy of the above premises continue to be effective and the covenants therein binding on you in respect of:

Unit No.	Area (in sqm)	Rental (subject to payment of GST)	Service Charge (subject to payment of GST)
#03-01/02	1,208.00	$14.10	$2.75

4. Our agreement to the above partial premature termination is without prejudice to whatever claims/action the Corporation may have against you (if any) for arrears, debts, breach of covenants, etc.

5. Please note that our granting of your request/application here does not at any time prejudice or waive any of our rights or remedies for breaches of your obligations to us. Any waiver by us, to be effective, must be clearly and specifically stated in writing.

6. Please let us have your letter of acceptance of the above terms and conditions as set out in the format under **Appendix 1** and payment of $515/- being administrative charge for the partial premature termination of tenancy within two weeks from the date hereof.

7 You may submit the above mentioned letter and payment by post or if you wish to make a submission personally, you may do so at our Customer Services Centre at The JTC Summit at 8 Jurong Town Hall Road. Please bring a copy of this letter when making your submission.

Yours sincerely

/s/ LAI GET LUAN

Lai Get Luan (Ms)
Deputy Manager (Lease Management)
Lease Management & Service Delivery Dept
Customer Services Group
DID : 8833304
FAX : 8855894
EMAIL : getluan@jtc.gov.sg

APPENDIX 1

DRAFT LETTER OF ACCEPTANCE

[Please use your company's letterhead]

Date:_____

TO: JTC Corporation
Customer Services Group
Lease Management & Service Delivery Dept
8 Jurong Town Hall Road
Singapore 609434

Attention:Ms. Lai Get Luan

Dear Sir or Madam:

PREMATURE PARTIAL TERMINATION OF TENANCY IN RESPECT OF PREMISES KNOWN AS SITE A20961 AT 28 AYER RAJAH CRESCENT #03-03/04 (AREA: 1208.00SQM)

1. We refer to your letter dated 12 October 2001 and hereby accept all terms and conditions stated in the said letter.

2. We enclosed herewith a cheque of $515/- being administrative fee for the premature partial termination of tenancy.

Signature of authorised signatory
Name of authorised signatory:
Designation:

Exhibit 10.64

10th October 2000

i-STT

Marketing & Sales Department
Jurong Town Corporation
The JTC Summit
8 Jurong Town Hall Road
Singapore 609434

BY HAND

Attn: Ms Loh Li Yoon

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRESCENT AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

1. We refer to your letter of offer dated 9 October 2000 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

2. We enclosed herewith a cheque for the amount of S$32,489.67 and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a Letter of Authorisation requested by you for your information and record.

/s/ TAY KIONG HONG

Name of authorised signatory:	}	Tay Kiong Hong
Designation:	}	Chief Operating Officer
for and on behalf of	}	

I-STT Pte Ltd
Blk 20 Ayer Rajah Crescent
#05-05/08 Singapore 139964
Tel: 723 8888 Fax: 820 2001

i-STT Pte Ltd

in the presence of:

/s/ LEE YOONG KIN

Name of witness:	}	Lee Yoong Kin
NRIC No:	}	S14925441

i-STT Pte Ltd
20 Ayer Rajah Crescent
#05-05/08
Singapore 139964
Tel: (65) 723 8888
Fax: (65) 820 2001
Website: www.i-STT.com

FACSIMILE MESSAGE

JTC Logo

TO	Mr. Lee Yoong Kin	DATE	10 Oct 2000
ORG.	i-STT PL	FAX NO.	820-2006
		NO. OF PAGES	1
FROM	Loh Yi Yoon		
SENDER'S TEL	(65) 8833-423	FAX NO.	(65) 8855-899

RE: LETTER OF OFFER FOR ARC 20 #05-01 OT 04 AT 1,439 SQM

1. We discussed this morning re the new application and the Letter of Offer (LOO) for the above which is processed on an urgent basis to suit your move-in and refurbishment needs. Faxed copy of LOO is done separately today.

2. To expedite the possession by your company on an urgent basis, you have agreed to accept the above offer upon issue of LOO. The Banker's Guarantee for the 3-month deposit will be sent in within a week.

3. As for the partial termination of #03-01 to 04 which payment have been made and the Banker's Guarantee and payment were done to cover #03-01 to 08 in Jun 2000, our Lease Management Officer/Wee Soon Mey will follow-up on this separately from the lease management perspectives.

Thank you

/s/ LOH LI YOON

Loh Li Yoon

Jurong Town Corporation
The JTC Summit
Industrial Parks Devt Group
8 Jurong Town Hall Road
Singapore 609434
Republic of Singapore
Tel: 1800-5687000 Fax: 8855899

JTC(L)7329/30 temp 1

9 October 2000

DID: 8833423
FAX: 8855899
Email vanesssaloh@jtc.gov.sg

JTC

i-STT PTE LTD
Blk 20 Ayer Rajah Crescent
#05-05 Ayer Rajah Industrial Estate
Singapore 139964

BY LUM

(Attn: Lee Yoong Kin)

Dear Sirs

PROPERTY TAX REBATE IN RESPECT OF THE FLATTED FACTORY SPACE AT BLK 20 AYER RAJAH CRESCENT #05-01 TO #05-04 AYER RAJAH INDUSTRIAL ESATATE SINGAPORE 139964

1. We attach herewith our letter of offer of tenancy for the above mentioned premises.
2. In line with the government's announcement on the property tax rebate, we are pleased to inform you that the Corporation is passing the full tax savings amount to 3% on the rent to you for the period 1st July 2000 to 30th June 2001.
3. Our Statement of Account in the letter of offer of tenancy has reflected this rebate.
4. Please be informed that this rebate does not vary any of the terms or stipulations in the Memorandum of Tenancy.

Yours faithfully

/s/ LOH LI YOON

LOH LI YOON (Ms)
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Attd

Jurong Town Corporation
The JTC Summit
Industrial Parks Devt Group
8 Jurong Town Hall Road
Singapore 609434
Republic of Singapore
Tel: 1800-5687000 Fax: 8855899

JTC(L)7329/30 temp 1

9 October 2000

DID: 8833423
FAX: 8855899
Email vanesssaloh@jtc.gov.sg

JTC

i-STT PTE LTD
Blk 20 Ayer Rajah Crescent
#05-05 Ayer Rajah Industrial Estate
Singapore 139964

BY LUM

(Attn: Lee Yoong Kin)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE

1. We are pleased to offer a tenancy of the Premises subject to the following covenants, terms and conditions in this letter and in the annexed Memorandum of Tenancy ("the Offer"):

1.01 Location:

Pte Lot A19857D, Blk 20 ("the Building") Ayer Rajah Crescent #05-01 To #05-04, Ayer Rajah Industrial Estate Singapore 139964 ("the Premises") as delineated and edged in red on the plan attached to the Offer.

1.02 Term of Tenancy:

2 years 6½ months ("the Term") with effect from 16 January 2001 ("the Commencement Date").

Note: To co-terminate with A19857 and A19857(a) on 31 July 2003.

1.03 Tenancy Agreement:

Upon due acceptance of the Offer in accordance with clause 2 of this letter, you shall have entered into a tenancy agreement with us ("the Tenancy") and will be bound by the covenants, terms and conditions thereof.

In the event of any inconsistency or conflict between any covenant, term or condition of this letter and the Memorandum of Tenancy, the relevant covenant, term or condition in this letter shall prevail.

1.04 Area:

Approximately 1,439.0 square metres (subject to survey).

1.05 Rent and Service Charge:

Rent:

(a) Discounted rate of:

(i) $14.50 per square metre per month for the period from 16 January 2001 to 15 January 2002;

(ii) $14.80 per square metre per mouth for the period from 16 January 2002 to 15 January 2003;

(iii) $15.11 per square metre per month for the period from 16 January 2003 to 31 July 2003.

and

(b) Normal rate of:

$15.90 per square metre per month for the period from 16 January 2001 to 31 July 2003

in the event that the said discount is withdrawn,

("Rent") to be paid without demand and in advance without deduction on the 1 st day of each month of the year (i.e. 1 st of January, February, March, etc.). The next payment shall be made on 1 February 2001.

Service charge:

$4.50 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

Service charge:

$4.50 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.05(a) Air-conditioning Charge:

$0.008 per square metre per hour as charges for air-conditioning utility rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time in the same manner as the Service Charge.

1.06 Security Deposit/Banker's Guarantee:

You will at the time of acceptance of the Offer be required to place with us a deposit of $92,599.65 equivalent to 3 months' Rent (at the discounted rate payable in the third year of the Term) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (effective from 16 October 2000 to 31 January 2004) and/or such other form of security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to your for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the deductions so that the Security Deposit shall at all times be equal to 3 months' Rent at the normal rate payable in the third year of the Term and Service Charge.

*[(3rd yr rate + service charge) *3* floor area] + the value of air-cond charge*3]

1.07 Mode of Payment:

Where letter of authorization is required due to limit set by company

You have an existing GIRO account with us, the limit of which has to be increased to cover all the aforesaid payments. Please write to your Banker to authorize the same ("the letter of authorization") and let us have a copy thereof in accordance with the Mode of Acceptance herein.

1.08 Permitted Use:

(a) Subject to clause 1.12 of this letter, you shall commence full operations within four (4) months of the Commencement Date for the purpose of To providing full internet related activities including data centre, regional network management, product and software development and facility hosting only and for no other purpose whatsoever ("the Authorised Use").

(b) Thereafter, you shall maintain full and continuous operations and use and occupy the whole of the Premises for the Authorised use.

1.09 Approvals

The Tenancy is subject to approvals being obtained from the relevant government and statutory authorities.

1.10 Possession of Premises:

(a) Keys to the Premises will be given to you three (3) months prior to the Commencement Date subject to due acceptance of the offer ("Possession Date").

(b) From the Possession Date until the Commencement Date, you shall be deemed a licensee upon the same terms and conditions in the Tenancy.

(c) If you proceed with the Tenancy after the Commencement Date, the license fee payable from the Possession Date to the Commencement Date shall be waived ("Rent-Free Period"). Should you fail to so proceed, you shall:

(i) remove everything installed by you;

(ii) reinstate the Premises to its original state and condition; and

(iii) pay us a sum equal to the prevailing market rent payable for the period from the Possession Date up to the date the installations are removed and reinstatement completed to our satisfaction.

without prejudice to any other rights and remedies we may have against you under the Tenancy or at law:

1.11 Preparation and Submission of Plans:

(a) No alternation, addition, improvement, erection, installation or interference to or in the Premises or the fixtures and fittings therein is permitted without Building Control Unit [BCU(JTC)] prior written consent. Your attention is drawn to clauses 2.10 to 2.19 and 2.34 of the Memorandum of Tenancy.

(b) You will be required to prepare and submit floor layout plans of your factory in accordance with the terms of the tenancy and the 'Guide' attached. It is important that you should proceed with the preparation and submission of the plans in accordance with the procedures set out in the said 'Guide'.

(c) Should there be alteration of existing automatic fire alarm and sprinkler system installation, alteration plans should be submitted to Building Control Unit [BCU(JTC)] for approval on fire safety aspects. All fire alarm & sprinkler system plans must be signed by a relevant Professional Engineer, registered with the Professional Engineers Board of Singapore.

(d) Upon due acceptance of the Offer, a copy of the floor and elevation plans (transparencies) will be issued to you to assist in the preparation of the plans required herein.

(e) No work shall commence until the plans have been approved by Building Control Unit [BCU(JTC)].

(f) Kindly note that at present URA requires you to use and occupy at least sixty per cent (60%) of the gross floor area of the Premises for industrial activities and ancillary warehousing activities; and you may use and occupy the remaining gross floor area, if any, for offices, showrooms, neutral areas or communal facilities and such other uses as may be approved in writing by us and the relevant governmental and statutory authorities. Nonetheless, as provided in paragraph 1.08, you shall ensure that the Premises:

(i) are used primarily for the industrial activities stipulated in the authorised use approved by us; and

(ii) are not used or occupied for the purpose of offices, showrooms, storage, warehousing, industrial activities unrelated to such authorised use or for any other use unless approved in writing by us and the relevant governmental statutory authorities.

1.12 Final Inspection:

You shall ensure that final inspection by us of all installations is carried out and our approval of the same is obtained before any operations in the Premises may be commenced.

1.13 Special Conditions:

(1) Normal (Ground & Non-ground) Floor Premises

You shall comply and ensure compliance with the following restrictions.

(a) maximum loading capacity of the goods lifts in the Building, and

(b) maximum floor loading capacity of 10.00 kiloNewtons per square metre of the Premises on the storey of the Building PROVIDED THAT any such permitted load shall be evenly distributed.

We shall not be liable for any loss or damage that you may suffer from any subsidence or cracking of the ground floor slabs and aprons of the Building.

(2) You shall comply and ensure compliance with all notices, rules and regulations relating to the use of the Carpark (as defined in the Memorandum of Tenancy) including but not limited to:

(i) parking or placing of container, vehicles, trailers or other carriages; and

(ii) parking charges.

(3) You are to connect the mechanical ventilation system in the Premises to the switchboard installed by you, subject to clauses 2.12, 2.13 and 2.14 of the Memorandum of Tenancy.

(4) Option for renewal of tenancy:

(a) You may within 3 months before the expiry of the Term make a written request to us for a further term of tenancy.

(b) We may grant you a further term of tenancy of the Premises upon mutual terms to be agreed between you and us subject to the following:

(i) there shall be no breach of your obligations at the time you make your request for a further term;

(ii) our determination of revised rent, having regard to the market rent of the Premises at the time of granting the further term, shall be final;

(iii) we shall have absolute discretion to determine such covenants. terms and conditions, but excluding a covenant for renewal of tenancy; and

(iv) there shall not be any breach of your obligations at the expiry of the Term.

2. Mode of Acceptance:

The Offer shall lapse if we do not receive the following by 15 October 2000:

- Duly signed letter of acceptance (in duplicate) of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix.)**
- Payment of the sum set out in clause 4.
- A copy of the letter of authorization from your Banker.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

	Amount		+3% GST
Rent at $14.50 per square metre per month on 1,439.0 square metres for the period 16 January 2001 to 15 February 2001	$20,865.50		
Less:	$ 625.97		
3% property tax rebate	$ 20,239.53		
Service Charge at $4.50 per square metre per month on 1,439.0 square metre for the period 16 January 2001 to 15 February 2001	$ 6,475.50		
Air-conditioning charges at $0.008 per square metre per hour on 1,439.0 square metre for the 1 st month from period 16 January 2001 to 15 February 2001 computed on 23-working day basis.			
* See Notes below	$ 2,647.76	$ 29,362.79	$880.88
Deposit equivalent to three months' rent, service charge and air-conditioning charges (or Banker's Guarantee provided in accordance with sub-paragraph 106 above)			
Note: *Based on third year rent of $15.11 psm pm.*		$92,599.65	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC on your behalf		$ 2,246.00	
Sub-Total Payable		$ 124,208.44	$880.88
Add: GST + 3%		$ 880.88	
Total Payable inclusive of GST		$125,089.32	

Notes:

1. *This is for the 1st month air-con utility charge based on an average of 23 working days (230 hours) only as part of the deposit. (Mon – Fri 8 a.m. to 6 p.m.)*
   (Sat - 8 a.m. to 1 p.m.)
2. *Subsequent air-con utility charges for standard and/or non-standard charges will be computed by the Lease Management Officer of the Customer Service Department/South Zone.*

5. Rent-Free Period:

As the Commencement Date will not be deferred, we advise you to accept the Offer as soon as possible and to collect the keys to the Premises on the scheduled date in order to maximize the Rent-Free Period referred to in clause 1.10(c) of this letter.

6. Variation to the Tenancy

This letter and the Memorandum of Tenancy constitute the full terms and conditions governing the Offer and no terms or representation or otherwise, whether express or implied, shall form part of the Offer other than what is contained herein. Any variation, modification, amendment, deletion, addition or otherwise of the covenants, terms and conditions of the Offer shall not be enforceable unless agreed by both parties and reduced in writing by us.

7. Season Parking:

Season parking tickets for car parking lots within the Estate can be purchased from the JTC Zone Office serving the Estate (Contact no. of the East Zone Office is: 6654628). Please note that the number of season parking ticket(s) that can be purchased by you will depend on eligibility rules set out by us.

8. Application for Approvals, Utilities etc.

Upon your acceptance of the covenants, terms and conditions of the Offer, you are advised to proceed expeditiously as follows:

8.01 Preliminary Clearance:

Comply with the requirements of the Chief Engineer (Central Building Plan Unit), Pollution Control Department and/or other departments pursuant to your application/s for preliminary clearance. (Please note that we have referred your application to the relevant department/s)

8.02 Discharge of Trade Effluence:

Complete the attached Application for Permission to Discharge Trade Effluent into Public Sewer and return the application form direct to the Head, Pollution Control Department, Ministry of Environment, Environment Building, 40 Scotts Road, Singapore 228231 (Telephone No. 7327733).

8.03 Electricity:

Engage a registered electrical consultant or competent contractor to submit three sets of electrical single-line diagrams to and in accordance with the requirements of our Property Support Department (PSD), Customer Services Group, JTC East Zone Office for endorsement before an application is made to the Power supply Pte Ltd to open an

account for electricity connection. Please contact our Property Support Department (PSD) at Blk 25 Kallang Avenue #05-01 Kallang Basin Industrial Estate Singapore 339416 direct for their requirements.

8.04 Water:

Submit four copies of sketch plans, prepared by a licensed plumber, showing the section and layout of the plumbing, to our Building Control Unit [BCU(JTD)] for approval prior to the issue of a Letter to Water Conservation Department, Public Utilities Board to assist you in your application for a water sub-meter.

8.05 Telephone:

Apply direct to Singapore Telecommunications Ltd for all connections.

8.06 Automatic Fire Alarm System (Incorporating Heat Detector)

Engage a registered electrical consultant/professional engineer to submit two sets of fire alarm drawings, indicating the existing fixtures if any, the proposed modifications of the fire alarm and the layout of machinery, etc. to and in accordance with the requirements of our Building Control Unit [BCU(JTC)]. Please contact our Building Control Unit [BCU(JTC)] at 301 Jurong Town Hall Road (3 rd level) Singapore 609431 direct for further requirements.

8.07 Factory Inspectorate

Complete and return direct to Chief Inspector of Factories the attached form, “Particulars to be submitted by occupiers or Intending Occupiers of Factories.”

Yours faithfully

LOH LI YOON (Ms)
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Encl

SPECIMEN GUARANTEE FORM GUARANTEE

TO: JURONG TOWN CORPORATION
THE JTC SUMMIT
8 JURONG TOWN HALL ROAD
SINGARPORE 609434

WHEREAS:

[I-STT PTE LTD] OF [Blk 20 Ayer Rajah Crescent #05-05 to #05-08 Ayer Rajah Industrial Estate Singapore 139964] ("the Tenant") is a tenant of the premises known as [Blk 20 Ayer Rajah Crescent #05-01. To #05-04 Ayer Rajah Industrial Estate Singapore 139964] ("the Premises") pursuant to a letter of offer dated [9 October 2000] from Jurong Town Corporation ("JTC") to and duly accepted by the Tenant ("the Tenancy", which expression shall include any written amendments made to the Tenancy from time to time).

IN CONSIDERATION OF your agreeing to grant the Tenancy and pursuant to a term of the Tenancy, we, the undersigned, hereby unconditionally undertake to pay to you from time to time on first demand the sum or aggregate sums not exceeding [$92,599.65] ("the Full Guaranteed Sum") if accompanied by your statement that the Tenant is in breach of any of the Tenant's obligations to you under the Tenancy and that the amount demanded is due and payable to you and remains unpaid provided that our ability under this Guarantee shall not exceed the Full Guaranteed Sum.

Our liability under this Guarantee shall be that of a principal debtor and not by way of surety and such liability shall not be discharged or affected by any event, act or omission whereby our liability would have been discharged if we had been a surety.

This Guarantee is valid from [16 October 2000] and shall expire on [31 January 2004] ("the expiry period") and our liability hereunder shall cease in respect of any claims made after the expiry period.

Notwithstanding that this Guarantee may not have expired, our liability hereunder shall cease forthwith upon our paying to you the Full Guaranteed Sum to be held by you as a security deposit under the Tenancy.

Dated

[Signature, names and designations of authorised signatories of Bank/Finance Company and rubber stamp of Bank/Finance Company]

Draft of Letter of Acceptance

(Please use company's letterhead and in Duplicate)

Date: (To be dated on the day this Letter is forwarded to JTC)

BY HAND

Marketing & Sales Department
Jurong Town Corporation
The JTC Summit
8 Jurong Town Hall Road
Singapore 609434

(Attn: Ms Loh Li Yoon)

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRESCENT #05-01, #05-04 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964]

1. We refer to your letter of offer dated [9 October 2000] for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of [$125,089.32] as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of [$32,489.67] and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a Letter of Authorisation as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of:

[I-STT PTE LTD]

in the presence of:

[Name of witness:]
[NRIC No.]

* Please omit if not applicable

[ALLOCATION PLAN]

Exhibit 10.65

7th July 2000

Marketing & Sales Department Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

BY HAND

Attn: Ms Loh Li Yoon

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRESCENT #03-01 TO # 03-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

1 We refer to your letter of offer and letter dated **24 May 2000** and amendment dated 8 June 2000 for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

2. We enclose herewith a cheque for the amount of **$62,674.89** and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

/s/ SIO TAT HIANG

[Name of authorised signatory:	}	Sio Tat Hiang
[Designation:	}	Executive Vice President
for and behalf of:	}	STT Communications Pte Ltd

in the presence of:

/s/ LEE YOONG KIN

[Name of witness:	}	Lee Yoong Kin
[NRIC No:]	}	14925441

7th July 2000

Marketing & Sales Department Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

BY HAND

Attn: Ms Loh Li Yoon

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRESCENT #03-01 TO # 03-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

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3. In addition, we also enclose herewith a duly completed GIRO authorisation form as requested by you for your information and record.

/s/ SIO TAT HIANG

[Name of authorised signatory:	}	Sio Tat Hiang
[Designation:	}	Executive Vice President
for and behalf of:	}	STT Communications Pte Ltd

in the presence of:

/s/ LEE YOONG KIN

[Name of witness:	}	Lee Yoong Kin
[NRIC No:]	}	14925441

8 June 2000

STT.COM PTE LTD **BY LUM**
Blk 20 Ayer Rajah Crescent
#05-05/08
Singapore 139964

(Attn: Mr Ng Hiang Cheok)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE AT PTE LOT A19857C, BLK 20 AYER RAJAH CRES #03-01 TO 03-08, AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964

1. We refer to our offer dated 24 May 2000 and our fax letter dated 2 June 2000.

2. We are pleased to inform you that the Corporation has no objection in principle to defer the possession of the premises to **16 July 2000**.

3. In view of the above, please note the following amendments to our Letter of Offer dated 24 May 2000.

1.02 Term of Tenancy:

2 years 9½ months ("the Term") with effect from **16 October 2000** ("the Commencement Date"). **This tenancy is to co-terminate with Pte Lot A19857 and A19857A. Tenancy shall expire on 31 July 2003.**

1.05 Rent and Service Charge:

(a) Discounted rate of:

(i) $14.50 per square metre per month for the period from 16 October 2000 to 15 October 2001;

(ii) $141.80 per square metre per month for the period from 16 October 2001 to 15 October 2002;

(iii) $15.11 per square metre per month for the period from 16 October 2002 to 31 July 2003.

("Rent") to be paid without demand and in advance without deduction on the 1st day of each month of the year (i.e. 1st of January, February, March, etc.). The next payment shall be made on 16 November 2000.

Note:

Posted rent at $17.30 per square metre per month.

Service charge:

$4.50 per square metre per month. ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.06 Security Deposit/Banker's Guarantee:

For Discounted Rent:

You will at the time of acceptance of the Offer be required to place with us a deposit of **$175,884.05** equivalent to 3 months' Rent (at the discounted rate) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (**effective from 16 July 2000 to 31 January 2004**) and/or such offer form or security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to you for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the deductions so that the Security Deposit shall at all times be equal to 3 months' Rent and Service Charge.

2. Mode of Payment:

The Offer shall lapse if we do not receive the following by **10 July 2000:**

- Duly signed letter of acceptance **(in duplicate)** of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix)**
- Payment of the sum set out in clause 4.
- Duly completed GIRO authorization form or a copy of the letter of authorization from your Banker.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

		Amount	+3% GST
Rent at $14.50 psm per month on 2,989.70 sqm for the period 16 October 2000 to 15 November 2000	$ 43,350.65		
Less:			
3% property tax rebate	$ 1,300.52		
	$ 42,050.13		
Service Charge at $4.50 psm per month on 2,989.70 sqm for the period 16 October 2000 to 15 November 2000	$ 13,453.65	$ 55,503.78	$ 1,665.11
Deposit equivalent to three months' rent service charge (or Banker's Guarantee provided in accordance with sub-paragraph 1.06 above)		$ 175,884.05	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC on your behalf		$ 5,506.00	
Sub-Total Payable		$ 236,893.83	$ 1,665.11
Add: GST + 3%		$ 1,665.11	
Total Payable inclusive of GST		$ 238,558.94	

4. The Corporation is passing the full tax savings amounting to 3% on the rent to you for the period 16 October 2000 to 30 June 2000

5. Keys to the premises will be given to you three (3) months prior to the Commencement Date is 16 July 2000 ("Possession Date") subject to due acceptance in accordance with the Mode of Acceptance above.

6. All other terms and conditions as sated in our offer dated 24 May 2000 remain unchanged.

Yours faithfully

/s/ LOH LI YOON

LOH LI YOON (MS)
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Encl

Draft of Letter of Acceptance

(Please use company's letterhead and **In Duplicate**)

Date: (To be dated on the day this letter is forwarded to JTC)

BY HAND

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

Attn: Ms Loh Li Yoon

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #03-01, To # 03-08 AYER RAJAH INDUSTRIAL ESTATE Singapore 139964]

1 We refer to your letter of offer and letter dated **24 May 2000** and amendment dated **8 June 2000** for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of **$238,558.94** as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of **$62,674.89** and the Banker's Guarantee as security deposit as confirmation of our acceptance.

3. In addition, we also enclose herewith a duly completed GIRO authorisation form/Letter of Authorisation as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of:

[STT.COM PTE LTD]

in the presence of:

[Name of witness:]
[NRIC No:]

***Please omit if not applicable**

24 May 2000

STT. COM PTE LTD
Blk 20 AYER RAJAH CRES
#05-05/08
Singapore 139964

BY LUM

(Attn: Mr Lee Yoong Kin)

Dear Sirs,

OFFER OF TENANCY FOR FLATTED FACTORY SPACE

1. We are pleased to offer a tenancy of the Premises subject to the following covenants, terms and conditions in this letter and in the annexed Memorandum of Tenancy ("the Offer"):

1.01 Location:

Pte Lot A19857(b), Blk 20 ("the Building") **AYER RAJAH CRES #03-01 TO #03-08, AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964** ("the Premises") as delineated and edged in red on the plan attached to the Offer.

1.02 Term of Tenancy:

2 years 9½ months tenancy ("the Term") **with effect from 16 October 2000** ("the Commencement Date") **and expiring on 31 July 2003**

1.03 Tenancy Agreement:

Upon due acceptance of the Offer in accordance with clause 2 of this letter, you shall have entered into a tenancy agreement with us ("the Tenancy") and will be bound by the covenants, terms and conditions thereof.

In the event of any inconsistency or conflict between any covenant, term or condition of this letter and the Memorandum of Tenancy, the relevant covenant, term or condition in this letter shall prevail.

1.04 Area:

Approximately **2,989.70 square metres** (subject to survey).

1.05 Rent and Service Charge:

(a) Discounted rate of:

(i) **$14.50** per square metre per month for the period from 16 October 2000 to 15 October 2001;

(ii) **$14.80** per square metre per month for the period from 16 October 2001 to 15 October 2002;

(iii) **$15.11** per square metre per month for the period 16 October 2002 to 31 July 2003.

("Rent") to be paid without demand and in advance without deduction on the 1st day of each month of the year (i.e. 1st of January, February, March, etc.) The next payment shall be made 16 November 2000.

Note:

Posted rent at $17.30 per square metre per month.

Service charge:

$4.50 per square metre per month, ("Service Charge") as charges for services rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time.

1.05(a) **Air-conditioning Charge:**

$0.008 per square metre per hour as charges for air-conditioning utility rendered by us, payable without demand on the same date and in the same manner as the Rent, subject to our revision from time to time in the same manner as the Service Charge.

1.06 **Security Deposit/Banker's Guarantee:**

For Discounted Rent:

You will at the time of acceptance of the Offer be required to place with us a deposit of $175,884.05 equivalent to 3 months' Rent (at the discounted rate) and Service Charge ("Security Deposit") as security against any breach of the covenants, terms and conditions in the Tenancy.

The Security Deposit may be in the form of cash and/or acceptable Banker's Guarantee in the form attached (effective from **16 July 2000** to **31 January 2004**) and/or such offer form or security as we may in our absolute discretion permit or accept.

The Security Deposit must be maintained at the same sum throughout the Term and shall be repayable to you without interest or returned to you for cancellation, after the termination of the Term (by expiry or otherwise) or expiry of the Banker's Guarantee, as the case may be, subject to appropriate deductions or payment to us for damages or other sums due under the Tenancy.

If the Rent at the discounted rate is increased to the normal rate or Service Charge is increased or any deductions are made from the Security Deposit, you are to immediately pay the amount of such increase or make good the

deductions so that the Security Deposit shall at all times be equal to 3 months' Rent and Service Charge.

1.07 Mode of Payment:

Except for the payment to be made with your letter of acceptance pursuant to clause 2 of this letter, during the Term, you shall pay Rent, Service Charge and GST by Interbank GIRO or any other mode to be determined by us.

[**Note:** Accordingly, you are to provide us with the duly completed GIRO authorization form enclosed herewith.

However, pending finalisation for the GIRO arrangement, you shall pay Rent, Service Charge and GST as they fail due by cheque].

Where letter of authorisation is required due to limit set by company

You have an existing GIRO account with us, the limit of which has to be increased to cover all the aforesaid payments. Please write to your Banker to authorize the same ("the letter of authorization") and let us have a copy thereof in accordance with the Mode of Acceptable herein.

1.08 Permitted Use:

(a) Subject to clause 1.12 of this letter, you shall commence full operations within four (4) months of the Commencement Date for the purpose of **provide full internet-based related activities including data centre, call centre, Regional Network Management, product and software development and facility hosting etc only** and for no other purpose whatsoever ("the Authorised Use").

(b) Thereafter, you shall maintain full and continuous operations and use and occupy the whole of the Premises for the Authorised Use.

1.09 Approvals

The Tenancy is subject to approvals being obtained from the relevant government and statutory authorities.

1.10 Possession of Premises:

(a) Keys to the Premises will be given to you three (3) months prior to the Commencement Date subject to due acceptance of the Offer ("Possession Date").

(b) From the Possession Date until the Commencement Data, you shall be deemed a licensee upon the same terms and conditions in the Tenancy.

(c) if you proceed with the Tenancy after the Commencement Date, the licence fee payable from the Possession Date to the Commencement

Date shall be waived ("Rent-Free Period"). Should you fail to so proceed, you shall:

(i) remove everything installed by you;

(ii) reinstate the Premises to its original state and condition; and

(iii) pay us a sum equal to the prevailing market rent payable for the period from the Possession Date up to the date the installations are removed and reinstatement completed to our satisfaction.

without prejudice to any other rights and remedies we may have against you under the Tenancy or at law

1.11 Preparation and Submission of Plans:

(a) No alteration, addition, improvement, erection, installation or interference to or in the Premises or the fixtures and fittings therein is permitted without Building Control Unit [BCU(JTC)] prior written consent. Your attention is drawn to clauses 2.10 to 2.19 and 2.34 of the Memorandum of Tenancy.

(b) You will be required to prepare and submit floor layout plans of your factory in accordance with the terms of the tenancy and the 'Guide' attached. It is important that you should proceed with the preparation and submission of the plans in accordance with the procedures set out in the said 'Guide'.

(c) Should there be alteration of existing automatic fire alarm and sprinkler system installation, alteration plans shall be submitted to Building Control Unit [BCU(JTC)] for approval on fire safety aspects. All fire alarm & sprinkler system plans must be signed by a relevant Professional Engineer, registered with the Professional Engineers Board of Singapore.

(d) Upon due acceptance of the Offer, a copy of the floor and elevation plans (transparencies) will be issued to you to assist in the preparation of the plans required herein.

(e) No work shall commence until the plans have been approved by Building Control Unit [BCU(JTC)].

(f) Kindly note that at present URA requires you to use and occupy at least sixty per cent (60%) of the gross floor area of the Premises for industrial activities and ancillary warehousing activities; and you may use and occupy the remaining gross floor area, if any, for offices, showrooms, neutral areas or communal facilities and such other uses as may be approved in writing by us and the relevant governmental and statutory authorities. Nonetheless, as provided in paragraph 1.08, you shall ensure that the Premises:

i) are used primarily for the industrial activities stipulated in the authorised use approved by us; and

ii) are not used or occupied for the purpose of offices, showrooms, storage, warehousing, industrial activities unrelated to such authorised use or for any other use unless approved in writing by us and the relevant governmental and statutory authorities.

1.12 Final inspection:

You shall ensure that final inspection by us of all installations is carried out and our approval of the same is obtained before any operations in the Premises may be commenced.\

1.13 Special Conditions:

(1) Normal (Ground & Non-ground) Floor Premises

You shall comply and ensure compliance with the following restrictions:

(a) maximum loading capacity of the goods lifts in the Building; and

(b) maximum floor loading capacity of 12.50 kiloNewtons per square metre of the Premises on the 3 rd storey of the Building PROVIDED THAT any such permitted load shall be evenly distributed.

We shall not be liable for any loss or damage that you may suffer from any subsidence or cracking of the ground floor slabs and aprons of the Building,

(2) You shall comply and ensure compliance with all notices, rules and regulations relating to the use of the **Carpark** (as defined in the Memorandum of Tenancy) including but not limited to:

(i) parking or placing of container, vehicles, trailers or other carriages; and

(ii) parking charges.

(3) You are to **connect the mechanical ventilation system** in the Premises to the switchboard installed by you, subject to clauses 2.12, 2.13 and 2.14 of the Memorandum of Tenancy.

(4) Option for renewal of tenancy:

(a) You may within 3 months before the expiry of the Term make a written request to us for a further term of tenancy.

(b) We may grant you a further term or tenancy of the Premises upon mutual terms to be agreed between you and us subject to the following:

(i) there shall be no breach of your obligations at the time you make your request for a further term;

(ii) our determination of revised rent, having regard to the market rent of the Premises at the time of granting the further term, shall be final;

(iii) we shall have absolute discretion to determine such covenants, terms and conditions, but excluding a covenant for renewal of tenancy; and

(iv) there shall not be any breach of your obligations at the expire of the Term.

2. Mode of Acceptance:

The Offer shall lapse if we do not receive the following by **10 July 2000**:

- Duly signed letter of acceptance **(in duplicate)** of all the covenants, terms and conditions in the Tenancy in the form enclosed at the Appendix. **(Please date as required in the Appendix)**
- Payment of the sum set out in clause 4.
- Duly completed GIRO authorized form or a copy of the letter of authorization from your Banker.

3. Please note that payments made prior to your giving us the other items listed above may be cleared by and credited by us upon receipt. However, if the said other items are not forthcoming from you within the time stipulated herein, the Offer shall lapse and there shall be no contract between you and us arising hereunder. Any payments received shall then be refunded to you without interest and you shall have no claim of whatsoever nature against us.

4. The total amount payable is as follows:

	Amount		+3% GST
Rent at $14.50 psm per month on 2,989.70 sqm for the period 16 October 2000 to 15 November 2000	$ 43,350.65		
Less:			
3% property tax rebate	$ 1,300.52		
	$ 42,050.13		
Service Charge at $4.50 psm per month on 2,989.70 sq m for the period 16 September 2000 to 15 October 2000	$ 13,453.65	$ 55,503.78	$ 1,665.11
Deposit equivalent to three months' rent and service charge (or Banker's Guarantee provided in accordance with subparagraph 1.06 above)		$ 175,884.05	
Stamp fee payable on Letter of Acceptance which will be stamped by JTC on your behalf		$ 5,330.00	
Sub-Total Payable		**$ 236,717.83**	**$ 1,665.11**
Add: 3% GST		**$ 1,665,11**	
Total Payable inclusive of GST		**$ 238,382.94**	

5. Rent-Free Period:

As the Commencement Date will not be deferred, we advise you to accept the Offer as soon as possible and to collect the keys to the Premises on the scheduled date in order to maximize the Rent-Free Period referred to in clause 1.10(c) of this letter.

6. Variation to the Tenancy

The letter and the Memorandum of Tenancy constitute the full terms and conditions governing the Offer and no terms or representation or otherwise, whether express or implied, shall form part of the Offer other than what is contained herein. Any variation, modification, amendment, deletion, addition or otherwise of the covenants, terms and conditions of the Offer shall not be enforceable unless agreed by both parties and reduced in writing by us.

7. Season Parking:

Season parking tickets for car parking lots within the Estate can be purchased from the JTC Zone Office serving the Estate (Contact no. of the **South Zone Officeis: 6654626**). Please note that the number of season parking ticket(s) that can be purchased by you will depend on eligibility rules set out by us.

8. Application for Approvals, Utilities etc.

Upon your acceptance of the covenants, terms and conditions of the Offer, you are advised to proceed expeditiously as follows:

8.01 Preliminary Clearance:

Company with the requirements of the Chief Engineer (Central Building Plan Unit), Pollution Control Department and/or other departments pursuant to your application/s for preliminary clearance. (Please note that we have referred your application to the relevant department/s)

8.02 Discharge of Trade Effluence:

Complete the attached Application for Permission to Discharge Trade Effluent into Public Sewer and return the application form direct to the Head, Pollution Control Department, Ministry of Environment Building, 40 Scotts Road, Singapore 228231 (Telephone No. 7327733).

8.03 Electricity:

Engage a registered electrical consultant or competent contractor to submit three sets of electrical single-line diagrams to and in accordance with the requirements of our Property Support Department (PSD), Customer Services Group, JTC East Zone Office for endorsement before an application is made to the Power Supply Pte Ltd to open an account for electricity connection. Please contact our Property Support Department (PSD) at Blk 25 Kallang Avenue #05-01 Kallang Basin Industrial Estate Singapore 339416 direct for their requirements.

8.04 Water:

Submit four copies of sketch plans, prepared by a licensed plumber, showing the section and layout of the plumbing, to our Building Control Unit [BCU(JTC)] for approval prior to the issue of a letter to Water Conservation Department, Public Utilities Board to assist you in your application for a water sub meter.

8.05 Telephone:

Apply direct to Singapore Telecommunications Ltd for all connections.

8.06 Automatic Fire Alarm System (Incorporating Heat Detector)

Engage a registered electrical consultant/professional engineer to submit two sets of fire alarm, drawings, indicating the exiting fixtures if any, the proposed modifications of the

fire alarm and the layout of machinery, etc to and in accordance with the requirements of our Building Control Unit [BCU(JTC)]. Please contact our Building Control Unit [BCU(JTC)] at 301 Jurong Town Hall Road (3rd level) Singapore 609431 direct for further requirements.

8.07 Factory Inspectorate

Complete and return direct to Chief Inspector of Factories the attached form, "Particulars to be submitted by occupiers or Intending Occupiers of Factories".

Yours faithfully

/s/ LOH LI YOON

LOH LI YOON (MS)
MARKETING & SALES DEPARTMENT
INDUSTRIAL PARKS DEVELOPMENT GROUP
JURONG TOWN CORPORATION
Encl

Draft of Letter of Acceptance

(Please use company's letterhead and In Duplicate)

JTC(L)7329/30/VL

Date: (To be dated on the day this letter is forwarded to JTC)

BY HAND

Marketing & Sales Department
Jurong Town Corporation
Jurong Town Hall
301 Town Hall Road
Singapore 609431

(Attn: Loh Li Yoon)

ACCEPTANCE OF OFFER OF TENANCY FOR THE PREMISES AT BLK 20 AYER RAJAH CRES #03-01 To # 03-08 AYER RAJAH INDUSTRIAL ESTATE SINGAPORE 139964]

1 We refer to your letter of offer and letter dated **[24 May 2000]** for the Tenancy and hereby confirm our acceptance of all the covenants, terms and conditions stipulated therein.

*2a. We enclose herewith a cheque for the sum of the amount of **[$238,558.94]** as confirmation of our acceptance.

*2b. We enclose herewith a cheque for the amount of **[$62,674.89]** and the Banker's Guarantee as security deposit as confirmation of our acceptance.

*3. In addition, we also enclose herewith a duly completed GIRO authorisation form/Letter of Authorisation as requested by you for your information and record.

[Name of authorised signatory:]
[Designation:]
for and on behalf of:

[STT.COM PTE LTD]

in the presence of:

[Name of witness:]
[NRIC No:]

*Please omit if not applicable

[ALLOCATION PLAN]

Exhibit 10.66

NATION BUILDING II

Lease Agreement

Agreement No. R-069 /44

Dated February 1, 2001

This agreement is made at the office of the Nation Multimedia Group Public Co., Ltd. between Nation Multimedia Group Public Co., Ltd., having registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee authorized directors herein after called the "Lessor" of one part and

i-STT Nation Ltd. having registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Lim Peng Koon and Mr. Sermsin Samalapa authorized director hereinafter called the "Lessee" of the other part.

Whereas the Lessor is the owner of the the building at 44 on the 1 st and 3rd floor of Nation Building II, situated at 44 Moo 10, Bangna Trad-Road, Kweang Bangna, Khet Bangna, Province of Bangkok Metropolis, wishes to lease some part of the aforesaid unit to the Lessee and the Lessee wishes to take lease, both parties agree to enter into a lease agreement subject to the following terms.

1. The Lessor agrees to lease out and the Lessee agrees to take on lease some part of the unit no. 44 on the 1 st and 3rd floor of Nation Building II, covering an approximate area of 947.8 square meters (Nine hundred and forty-seven point eight square meters) as appears in the floor plan attached to this agreement which shall be deemed as part of this agreement, hereinafter referred to as the "Leased Premises" for the business of keeping office and WEBCenter ™.

2. The term of the lease shall be for a period of 3 years commencing from February 1, 2001 to January 31, 2004. The Lessee agrees to pay monthly rental of Baht 142,170 (One hundred and forty-two thousand one hundred and seventy Baht only) throughout the term of the lease by advance payment within the 5th day of each month at the office of the Lessor. The Lessee shall have the option to renew this lease agreement for a further 3 years. The option shall be exercised by the Lessee by giving notice of his intention to renew the lease at least 90 days prior to the expiration of this lease agreement subject to the terms and conditions of the lease agreement. Should notification not be made within the specified time, it shall be deemed that the Lessee has no wish to renew the lease.

   In case the Lessee has renewed the lease. The Lessor and the Lessee agree to be bound by the terms and conditions of this lease agreement except that the rate of rent for a further 3 years shall be increased by not more than 15% of the previous rent.

3. The Lessee agrees to commence to conduct his business at the leased premises within 30 days from the date of receiving notice Iron the Lessor that the Lessee is eligible to utilize the leased premises.

4. In order to comply with the lease agreement, the Lessee agrees to deposit as security bond with the Lessor Baht 236,950 (Two hundred and thirty-six thousand nine hundred and fifty Baht only.) upon signing of this agreement. This security deposit without interest shall be returned to the Lessee in full alter the termination of the lease agreement and the Lessee is determined to be without any obligation due to the Lessor either directly oar indirectly.

In case where the Lessee is in breach of any section of this agreement, or wishes to terminate this agreement before the end of the lease period, then the Lessee shall forfeit to the Lessor the deposited security bond as damages.

5. Both parties agree to take the Service Agreement No. S-069/44 dated February 1, 2001 between the Lessor and the Lessee as part of the lease agreement. All the terns and conditions in the Service Agreement shall apply to this agreement to the extent that they are not contrary to or in conflict with this agreement, when the terms of this agreement shall take preference. Breach of the Service Agreement shall also be deemed breach of this agreement.

6. The right of the Lessee refers only to the lease of the interior of the premises and excludes the external areas of the premises. Interior fitting out may be done upon submitting the detailed plans and written permission from the Lessor obtained.

The Lessee may not modify or alter the leased premises. Any modification, alteration, or addition carried out on the leased premises, may be conducted only with the Lessor's prior written consent. In all cases any new fixture resulting from modification, alteration, addition to the leased premises shall immediately become the property of the Lessor. In case of damage having occurred to the leased premises, the Lessee shall be responsible for all repairs in order to reinstate to the original condition at his own expense, without any right to oppose or reject claims for any damages or compensation from the Lessor.

7. The Lessee agrees not to pierce the floor, ceiling, walls or any part in the interior or exterior of the leased premises without the Lessor's prior written permission.

8. The Lessee has the right to install name plates or advertising signs inside the leased premises only. Installation outside the leased premises shall be permitted only at the location assigned by the Lessor, and then only with the written permission of the Lessor. The Lessee agrees to pay for all costs, fees and all forms of taxation incurred in connection with any such installations.

In case the installation of the name plates or advertising signs outside the leased premises has been conducted without prior written permission from the Lessor, the Lessor or his representative shall have the right to remove them from the leased premises,

and the Lessee shall have no right to claim for any damages and shall be responsible for all expenses incurred in reinstating the place of fixture to the original condition.

9. The Lessee shall comply with all the rules and regulations of Nation Building and Nation Tower Juristic Person.

10. The Lessee shall not allow any person to reside on the leased premises, and shall enter and leave the leased premises within accepted normal hours of business. Should it be necessary to enter or leave before or after such times, he must observe and conform to all reasonable regulations made by the Lessor in writing.

11. The Lessee shall conduct business in his own name as specified in Clause 1, and shall not sublease nor allow other persons to conduct it in his stead without prior written permission from the Lessor. Changing of business name without prior permission shall be deemed as sublease.

12. During the period of the lease agreement the Lessee agrees not to assign the lease right either in part or in full, except with the Lessor's prior express written consent, and the transferee shall be bound by all the terms and conditions of this agreement.

13. The Lessor shall pay all rental tax and withholding tax throughout the term of the lease agreement, at the rate prescribed by law.

    In case of registration of the lease, the Lessee shall pay for registration fees and other expenses in connection with the registration.

14. The Lessee accepts that the leased premises are in good condition without deterioration at commencement of the lease period. The Lessee agrees to maintain the same in good condition throughout the term of the Lease at his own expense.

    During the period of the lease should the leased premises or any interior accessories become deteriorated or damaged by the Lessee or any of his assignees, and the Lessee does not implement repairs within a reasonable period as deemed fit by the Lessor. The Lessor shall be entitled to enter upon the Leased Premises to undertake the repairs himself and the Lessee shall reimburse all reasonable repair expenses in full upon request by the Lessor.

15. The Lessee shall keep the inside and the immediate outside vicinity of the leased premises clean at all times and dispose of refuse in the container or other place of disposal stipulated by the Lessor.

16. Throughout the period of the lease, the Lessee agrees not to bring into the leased premises any things prohibited by law, any chemical substance, fuel, inflammable material, or any material posing a fire hazard, or load any part of the leased premises with anything weighting more than 1,000 kilograms per square meter.

17. The Lessee may insure for its own benefit the interior decoration of the Leased Premises and its stock (if any) contained therein in accordance with common business practice.

18. Throughout the term of the lease, the Lessor has the right to install any additional equipment and apparatus for the benefit of the Lessee or other lessees or of the Lessor himself, provided that in so doing minimum disturbance is caused to the Lessee and the Lessee shall give his best cooperation in this regard.

    The Lessor shall not be responsible for any obstruction or for any inconvenience which may be caused to the Lessee owing to the necessity of installation, repair, or maintenance, or any other force major which is beyond the control of the Lessor, including any actions by his workers in implementation thereof.

19. Both Lessor and Lessee have a liability insurance to cover any damages occurring from deterioration or other accidents from the state of the building.

20. The Lessee or his assignees shall not commit any act which is unlawful, immoral, undesirable, or cause disturbance or nuisance to the Lessor or other persons, or broadcast by whatever means, or cause objectionable noises to emanate from the leased premises, or commit any act which poses danger to the leased premises or to nearby property, or the Lessor, or any other persons.

21. Should the Lessee be in default of rent payment or fails to comply with any clause of this agreement, or is ordered by the court for his property within the leased premises to be impounded or confiscated or the Lessee is charged with bankruptcy, the agreement shall be deemed terminated without prior notification. The Lessor has the right to enter upon and repossess the leased premises immediately with the right to remove all the property of the Lessee therefrom. The Lessee shall have no right to claim for any damages, including the right to enter into any action both Civil and Criminal against the Lessor.

22. Should fire or any other peril cause damage to the leased premises or any part thereof to the extent that, in the opinion of the Lessor, the leased premises can no longer be utilized by the Lessee, then the agreement shall be deemed terminated.

23. At the expiration of the term of this agreement or this agreement is terminated from whatever cause the Lessee shall remove all his belongings and vacate the leased premises immediately and deliver the leased premises to the Lessor in normal condition. Should the leased premises be damaged or deteriorated the Lessee shall be responsible to pay for all such losses.

    Should the Lessee be unable to hand over the leased premises to the Lessor then the Lessor shall have the right to claim for damages at the rate of baht 8,500 (eight thousand five hundred baht only) per day from the date due for handing over to the Lessor until the leased premises has been completely handed over to the Lessor in normal condition, without depriving the Lessor of the right to claim for other damages.

24. The Lessor or his representative shall have the right to enter the leased premises for inspection at any reasonable time and give advice or caution in the event of impending breach of any clause of this agreement or anything likely to cause damage. The Lessee shall comply with all the regulations and rules which the Lessor has imposed on all the lessees of the premises.

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25. In case written notification or correspondence cannot be conveyed to the Lessor's person by any other means, the Lessee accepts that a written notice affixed upon the leased premises shall be deemed sufficient notification and acknowledgment by the Lessee.

This agreement is made in duplicate. The parties to the agreement, each retaining one copy, have read and understood the entire substance of the agreement to their satisfaction and hereunto set their signatures and their company seals in the presence of witnesses.

Lessor : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL, VANCHAI SRIHERUNRUSMEE
(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Lessee : i-STT Nation Ltd.

/ss/ LIM PEANG KOON AND SERMSIN SAMALAPA
(Mr. Lim Peang Koon and Mr. Sermsin Samalapa)

Witness : /s/ TIAB PHALEE
(Mr. Tiab Phalee)

Witness : _____
( )

Service Agreement

Agreement No. S-069/44

Dated February 1, 2001

This agreement is made at the office of the Nation Multimedia Group Public Co., Ltd. between Nation Multimedia Group Public Co., Ltd. registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee authorized directors hereinafter called the "Service Provider" of one part and

i-STT Nation Ltd. having registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis by Mr. Lim Peng Koon and Mr. Sermsin Samalapa authorized director hereinafter called the "Service Receiver" of the other part.

Both parties agree to enter into a Service Agreement subject to the following terms:

1. The Service Receiver has entered into the Lease Agreement with the Service Provider, Agreement No. R-069/44 dated February 1, 2001, for the premises situated at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Bangkok Metropolis, leasing some part of unit no. 44 approximate total area 947.8 square meters (Nine hundred and forty-seven point eight square meters) on the 1 st and 3rd floor of Nation Building II.

2. The Service Agreement shall be considered as part of the Lease Agreement above mentioned in Clause 1.

3. The Service Receiver agrees to pay service charges to the Service Provider by advance monthly payments as follows:

3.1	Electricity system per month	: Baht 47,390 (excluding value added tax)
3.2	Common property service per month	: Baht 47,390 (excluding value added tax)

4. During the electricity meter is not transferred to the Service Receiver name, the Service Receiver Lessee shall pay for the electricity charges in accordance with the sub-meter installed for the leased premises at the rate of the Metropolitan Electricity Authority (invoiced by the Lessor). However, if the classification of the electricity user change from 3.1.2 (present), the Service Provider still pay at the previous rate (classification 3.1.2), the remainder shall be responsible by the Service Receiver.

   Whenever the electricity meter has been transferred to the Service Receiver name, the Service Receiver shall pay for the deposit to the Metropolitan Electricity Authority. The Electricity charge of each month shall be payable directly to electricity Metropolitan Electricity Authority bill by the Service Receiver.

5. The Service Provider agrees to provide the Service Receiver with the following services:

5.1 Electricity distribution system for the Service Receiver to use throughout 24 hours whereby

5.2 Central Sanitary system for the use of bathrooms, toilets, drainage, sewerage, water supply and other sanitary facilities according to the Service Provider's design.

5.3 Car parking facilities to the Service Receiver's clients and visitors while imposing parking charges at an appropriate rate.

5.4 Security service in the common property areas.

5.5 Cleaning service in the common property areas.

5.6 Central refuse collection service.

6. The Service Provider shall provide and install water supply and water meter to the leased premises at the point stipulated in the plan (if any). The Service Receiver is responsible to pay charges for water consumption as recorded by the water meter at the rate stipulated by the Service Provider (Baht 16 per unit). The water supply charges had included with the common property service charges for the following month.

Should the Service Receiver wish to expand the water supply system, sanitary system, bathrooms and other facilities within the leased premises, the Service Receiver shall submit the expansion plans to the Service Provider who will give the matter consideration case by case, so as to be in conformance with engineering or architectural requirements and not in conflict with the law and by-laws of the Bangkok Metropolis in connection with this matter.

7. The Service Provider shall provide and install appropriate electrical power supply at the point stipulated in the Service Provider's design, with feeder cables and electricity meter inside the leased premises, together with receptacles and lighting fixtures at the points stipulated in the plans.

8. The Service Provider shall provide and install an internal telephone line by connecting the Lessee's telephone outlet to the building's PABX for which there is no charge to the Service Receiver. But the Service Receiver has to provide his own telephone handset.

9. The Service Receiver agrees to pay the service charges in advance according to Clause 3 of this agreement to the Service Provider within the 5th day of each month at the office of the Service Provider, commencing the payment from the time that the Lease agreement in Clause 1 becomes effective. The Service Receiver agrees to pay the service charges as long as he still occupies the leased premises, whether or not the lease agreement remains in effect, until the Service Receiver has completely returned the leased premises to the Service Provider.

10. The Service Receiver accepts that to be in breach of the Lease Agreement is also deemed to be in breach of the Service Agreement and vice versa.

11. Should there arise any difficulty in connection with providing the services in accordance herewith, the Service Provider agrees to correct it at his own expense. But such difficulties shall in no way be construed as just cause for the Service Receiver to terminate the agreement.

12. This agreement shall remain in full force and effect until the lease agreement between the Service Receiver and Service Provider referred to in Clause 1 shall expire.

13. Should the Service Receiver be in default in paying the Service Charges and is notified in writing by the Service Provider for payment to be made within a certain time limit and the Service Receiver does not pay within the specified time, then the Service Provider shall have the right to terminate the agreement and claim the whole amount of the security deposit immediately in accordance with Clause 4 of the Lease Agreement.

    The Service Receiver agrees to pay a late payment fine to the Service Provider at the rate of 15% per annum from the date of default until the outstanding services charges have been completely paid.

14. It is agreed that the service charges mentioned in Clause 3 are the expenses for provision of the services collected from all Service Receivers in proportion to leased areas. The Service Provider reserves the right to adjust the service charge rate in case of future increase in cost for provision of such services.

15. Any dispute arising from the terms and conditions of this agreement or concerning breach of this agreement shall be submitted to the Civil Court in Bangkok. In serving warrants and notices should the Service Provider have affixed the notice to the wall of the Leased Premises, it shall be deemed to have been properly delivered.

This agreement is made in duplicate. The parties to the agreement, each retaining one copy, have read and understood the entire substance of the agreement to their satisfaction and hereunto set their signatures and their company seals in the presence of witnesses.

Service Provider : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL, VANCHAI SRIHERUNRUSMEE

(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Service Receiver : i-STT Nation Ltd.

/ss/ LIM PENG KOON AND SERMSIN SAMALAPA

(Mr. Lim Peng Koon and Sermsin Samalapa)

Witness : /s/ TIAB PHALEE
(Mr. Tiab Phalee)

: _____
Witness ( )

Memorandum Attached to Lease Agreement No. R-069/44 and
Service Agreement No. S-069/44

Dated February 1, 2001

Both parties agree to additional terms as follows:

1. The Lessor/Service Provider present the following complimentary items without charge:

   1.1 Daily newspaper, The Nation and Krungthep Turakij.

   2.2 Nation Weekly

2. The Service Provider shall allow the Service Receiver the use of 9 parking spaces without charge throughout the period of the agreement. Visitors' carparking for 2 hours free of charge, Baht 10 per hour after all. The additional carparking spaces can be rented at the rate of Baht 500 -per space/ month. It is understood and agreed that the Service Provider shall not be held responsible for any loss or damage which may arise with the vehicles using the said parking spaces.

Lessor/Service Provider : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL, VANCHAI SRIHERUNRUSMEE

(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Lessee/Service Receiver : i-STT Nation Ltd.

/ss/ LIM PENG KOON AND SERMSIN SAMALAPA

(Mr. Lim Peng Koon and Sermsin Samalapa)

Witness : /s/ TIAB PHALEE

(Mr. Tiab Phalee)

Witness : _____

( )

Memorandum Attached to Lease Agreement No. R-069/44 and
Service Agreement No. S-069/44

Dated July 11, 2001

Both parties agree to additional terms as follows:

1. The Lessor/Service Provider shall maintain the peak demand to be below 1000 KW for the year 2001. Should the peak load exceeds 1000 KW, the Lessor agrees to renegotiate the responsibility of the new electricity charge.

2. The Lessor shall accept the software solution installed by the Lessee to measure the peak load demand .

3. The Lessor shall provide a fixed parking lot with the company sign on it for 5 cars.

Lessor/Service Provider : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL, VANCHAI SRIHERUNRUSMEE
(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Lessee/Service Receiver : i-STT Nation Ltd.

/ss/ LIM PEANG KOON AND SERMSIN SAMALAPA
(Mr. Lim Peng Koon and Sermsin Samalapa)

Witness : /s/ TIAB PHALEE
(Mr. Tiab Phalee)

Witness : _____
( )

Exhibit 10.67

NATION TOWER

Lease Agreement

Agreement No. R-103 /45

Dated October 1, 2001

This agreement is made at the office of the nation Multimedia Group Public Co., Ltd. between Nation Multimedia Group Public Co., Ltd., having registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee authorized directors herein after called the "Lessor" of one part and

i-STT Nation Ltd. having registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Alvin Oei and Mr. Sermsin Samalapa authorized director hereinafter called the "Lessee" of the other part.

Whereas the Lessor is the owner of the building at 46/15-16 on the 6 th floor of Nation Tower, situated at 46/15-16 Moo 10, Bangna Trad-Road, Kweang Bangna, Khet Bangna, Province of Bangkok Metropolis, wished to lease some part of the aforesaid unit to the Lessee and the Lessee wishes to take lease, both parties agree to enter into a lease agreement subject to the following terms.

1. The Lessor agrees to leas out and the Lessee agrees to take on lease unit no. 46/15-16 on the 6 th floor of Nation Tower, covering an approximate area of 348.54 square meters (Three hundred and forty-eight and point fifty-four square meters) as appears in the floor plan attached to this agreement which shall be deemed as part of this agreement, hereinafter referred to as the "Leased Premises" for the business of keeping office".

2. The term of the lease shall be for a period of 3 years commencing from October 1, 2001 to September 30, 2004. The Lessee agrees to pay monthly rental of Baht 37,642.32 (thirty-seven thousand six hundred and forty-two baht and thirty-two stang) throughout the term of the lease by advance payment within the 5th day of each month at the office of the Lessor. The Lessee shall have the option to renew this lease agreement for a further 3 years. The option shall be exercised by the Lessee by giving notice of his intention to renew the lease at least 90 days prior to the expiration of this lease agreement subject to the terms and conditions of the lease agreement. Should notification not be made within the specified time, it shall be deemed that the Lessee has no wish to renew the lease.

   In case the Lessee has renewed the lease. The Lessor and the Lessee agree to be bound by the terms and conditions of this lease agreement except that the rate of rent for a further 3 years shall be increased by not more than 15% of the previous rent.

3. The Lessee agrees to commence to conduct his business at the leased premises within 30 days from the date of receiving notice from the Lessor that the Lessee is eligible to utilize the leased premises.

4. In order to comply with the lease agreement, the Lessee agrees to deposit as security bond with the Lessor Baht 62,737 (sixty-two thousand and seven hundred and thirty-seven baht only.) upon signing of this agreement. This security deposit without interest shall be returned to the Lessee in full after the termination of the lease agreement and the Lessee is determined to be without any obligation due to the Lessor either directly or indirectly.

In case where the Lessee is in breach of any section of this agreement, or wishes to terminate this agreement before the end of the lease period, then the Lessee shall forfeit to the Lessor the deposited security bond as damages.

5. Both parties agree to take the Service Agreement No. S-103/45 dated October 1, 2001 between the Lessor and the Lessee as part of the lease agreement. All the terms and conditions in the Service Agreement shall apply to this agreement to the extent that they are not contrary to or in conflict with this agreement, when the terms of this agreement shall take preference. Breach of the Service Agreement shall also be deemed breach of this agreement.

6. The right of the Lessee refers only to the lease of the interior of the premises and excludes the external areas of the premises. Interior fitting out may be done upon submitting the detailed plans and written permission from the Lessor obtained.

The Lessee may not modify or alter the leased premises. Any modification, alteration, or addition carried out on the leased premises, may be conducted only with the Lessor's prior written consent. In all cases any new fixture resulting from modification, alteration, addition to the leased premises shall immediately become the property of the Lessor. In case of damage having occurred to the leased premises, the Lessee shall be responsible for all repairs in order to reinstate to the original condition at his own expense, without any right to oppose or reject claims for any damages or compensation from the Lessor.

7. The Lessee agrees not to pierce the floor, ceiling, walls or any part in the interior or exterior of the leased premises without the Lessor's prior written permission.

8. The Lessee has the right to install name plates or advertising signs inside the leased premises only. Installation outside the leased premises shall be permitted only at the location assigned by the Lessor, and then only with the written permission of the Lessor. The Lessee agrees to pay for all costs, fees and all forms of taxation incurred in connection with any such installations.

In case the installation of the name plates or advertising signs outside the leased premises has been conducted without prior written permission from the Lessor, the Lessor or his representative shall have the right to remove them from the leased premises, and the Lessee shall have no right to claim for any damages and shall be

responsible for all expenses incurred in reinstating the place of fixture to the original condition.

9. The Lessee shall comply with all the rules and regulations of Nation Tower Juristic Person.

10. The Lessee shall not allow any person to reside on the leased premises, and shall enter and leave the leased premises within accepted normal hours of business. Should it be necessary to enter or leave before or after such times, he must observe and conform to all reasonable regulations made by the Lessor in writing.

11. The Lessee shall conduct business in his own name as specified in Clause 1, and shall not sublease nor allow other persons to conduct it in his stead without prior written permission from the Lessor. Changing of business name without prior permission shall be deemed as sublease.

12. During the period of the lease agreement the Lessee agrees not to assign the lease right either in part or in full, except with the Lessor's prior express written consent, and the transferee shall be bound by all the terms and conditions of this agreement.

13. The Lessor shall pay all rental tax and withholding tax throughout the term of the lease agreement, at the rate prescribed by law.

    In case of registration of the lease, the Lessee shall pay for registration fees and other expenses in connection with the registration.

14. The Lessee accepts that the leased premises are in good condition without deterioration at commencement of the lease period. The Lessee agrees to maintain the same in good condition throughout the term of the Lease at his own expense.

    During the period of the lease should the leased premises or any interior accessories become deteriorated or damaged by the Lessee or any of his assignees, and the Lessee does not implement repairs within a reasonable period as deemed fit by the Lessor. The Lessor shall be entitled to enter upon the Leased Premises to undertake the repairs himself and the Lessee shall reimburse all reasonable repair expenses in full upon request by the Lessor.

15. The Lessee shall keep the inside and the immediate outside vicinity of the leased premises clean at all times and dispose of refuse in the container or other place of disposal stipulated by the Lessor.

16. Throughout the period of the lease, the Lessee agrees not to bring into the leased premises any things prohibited by law, any chemical substance, fuel, inflammable material, or any material posing a fire hazard, or load any part of the leased premises with anything weighting more than 250 kilograms per square meter.

17. The Lessee may insure for its own benefit the interior decoration of the Leased Premises and its stock (if any) contained therein in accordance with common business practice.

18. Throughout the term of the lease, the Lessor has the right to install any additional equipment and apparatus for the benefit of the Lessee or other lessees or of the Lessor himself, provided that in so doing minimum disturbance is caused to the Lessee and the Lessee shall give his best cooperation in this regard.

    The Lessor shall not be responsible for any obstruction or for any inconvenience which may be caused to the Lessee owing to the necessity of installation, repair, or maintenance, or any other force major which is beyond the control of the Lessor, including any actions by his workers in implementation thereof.

19. Both Lessor and Lessee have a liability insurance to cover any damages occurring from deterioration or other accidents from the state of the building.

20. The Lessee or his assignees shall not commit any act which is unlawful, immoral, undesirable or cause disturbance or nuisance to the Lessor or other persons, or broadcast by whatever means, or cause objectionable noises to emanate from the leased premises, or commit any act which poses danger to the leased premises or to nearby property, or the Lessor, or any other persons.

21. Should the Lessee be in default of rent payment or fails to comply with any clause of this agreement, or is ordered by the court for his property within the leased premises to be impounded or confiscated or the Lessee is charged with bankruptcy, the agreement shall be deemed terminated without prior notification. The Lessor has the right to enter upon and repossess the leased premises immediately with the right to remove all the property of the Lessee therefrom. The Lessee shall have no right to claim for any damages, including the right to enter into any action both Civil and Criminal against the Lessor.

22. Should fire or any other peril cause damage to the leased premises or any part thereof to the extent that, in the opinion of the Lessor, the leased premises can no longer be utilized by the Lessee, then the agreement shall be deemed terminated.

23. At the expiration of the term of this agreement or this agreement is terminated from whatever cause the Lessee shall remove all his belongings and vacate the leased premises immediately and deliver the leased premises to the Lessor in normal condition. Should the leased premises be damaged or deteriorated the Lessee shall be responsible to pay for all such losses.

    Should the Lessee be unable to hand over the leased premises to the Lessor then the Lessor shall have the right to claim for damages at the rate of baht 3,500 (three thousand and five hundred baht only) per day from the date due for handing over to the Lessor until the leased premises has been completely handed over to the Lessor in normal condition, without depriving the Lessor of the right to claim for other damages.

24. The Lessor or his representative shall have the right to enter the leased premises for inspection at any reasonable time and give advice or caution in the event of impending breach of any clause of this agreement or anything likely to cause damage. The Lessee shall comply with all the regulations and rules which the Lessor has imposed on all the lessees of the premises.

25. In case written notification or correspondence cannot be conveyed to the Lessor's person by any other means, the Lessee accepts that a written notice affixed upon the leased premises shall be deemed sufficient notification and acknowledgement by the Lessee.

This agreement is made in duplicate. The parties to the agreement, each retaining one copy, have read and understood the entire substance of the agreement to their satisfaction and hereunto set their signatures and their company seals in the presence of witnesses.

Lessor : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL VANCHAI SRIHERUNRUSMEE

(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Lessee : i-STT Nation Ltd.

/ss/ ALVIN OEI SERMSIN SAMALAPA

(Mr. Alvin Oei and Mr. Sermsin Samalapa)

Witness : /s/ TIAB PHALEE

(Mr. Tiab Phalee)

Witness : _____

( )

Service Agreement

Agreement No. S-103/45

Dated October 1, 2001

This agreement is made at the office of the Nation Multimedia Group Public Co., Ltd. between Nation Multimedia Group Public Co., Ltd. registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee authorized directors hereinafter called the "Service Provider" of one part and

i-STT Nation Ltd. having registered office at 44 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Province of Bangkok Metropolis, by Mr. Alvin Oei and Mr. Sermsin Samalapa authorized director hereinafter called the "Service Receiver" of the other part.

Both parties agree to enter into a Service Agreement subject to the following terms:

1. The Service Receiver has entered into the Lease Agreement with the Service Provider, Agreement No. R-103/45 dated October 1, 2001, for the premises situated at 46/15-16 Moo 10, Bangna-Trad Road, Kwaeng Bangna, Khet Bangna, Bangkok Metropolis, leasing some part of unit no. 44 approximate total area 348.54 square meters (Three hundred and forty-eight point fifty-four square meters) on the 6 th floor of Nation Tower.

2. The Service Agreement shall be considered as part of the Lease Agreement above mentioned in Clause 1.

3. The Service Receiver agrees to pay service charges to the Service Provider by advance monthly payments as follows:

3.1 Air-conditioning system	per month : Baht 12,547.44 (excluding value added tax)
3.2 Electricity system	per month : Baht 6,273.72 (excluding value added tax)
3.3 Common property service	per month : Baht 6,273.72 (excluding value added tax)

4. The Service Provider agrees to provide the Service Receiver with the following services:

   4.1 Completely installed air-conditioning system, together with central cooling by water according to the Service Provider's design, including air-conditioning units, control system and distribution ducts within the leased area.

The central cooling water system aforementioned in the first paragraph shall operate daily from 08.00 hrs. to 18.00 hrs. except Sundays and official public holidays.

4.2 Electricity distribution system for the Service Receiver to use throughout 24 hours whereby the Service Receiver shall pay for the electricity charges in accordance with the meter installed for the leased premises at the rate stipulated by the Service Provider. The electricity charges of each month shall be payable with the Service charges of the following month.

4.3 Central Sanitary system for the use of bathrooms, toilets, drainage, sewerage, water supply and other sanitary facilities according to the Service Provider's design.

4.4 Car parking facilities to the Service Receiver's clients and visitors while imposing parking charges at an appropriate rate.

4.5 Security service in the common property areas.

4.6 Cleaning service in the common property areas.

4.7 Central refuse collection service.

5. During the electricity meter is not transferred to the Service Receiver name, the Service Receiver Lessee shall pay for the electricity charges at the rate of the Metropolitan Electricity Authority.

Whenever the electricity meter has been transferred to the Service Receiver name, the Service Receiver shall pay for the deposit to the Metropolitan Electricity Authority. The Electricity charge of each month shall be payable directly to electricity Metropolitan Electricity Authority bill by the Service Receiver.

6. The Service Provider shall provide and install water supply and water meter to the leased premises at the point stipulated in the plan (if any). The Service Receiver is responsible to pay charges for water consumption as recorded by the water meter at the rate stipulated by the Service Provider (Baht 16 per unit). The water supply charges had included with the common property service charges for the following month.

Should the Service Receiver wish to expand the water supply system, sanitary system, bathrooms and other facilities within the leased premises, the Service Receiver shall submit the expansion plans to the Service Provider who will give the matter consideration case by case, so as to be in conformance with engineering or architectural requirements and not in conflict with the law and by-laws of the Bangkok Metropolis in connection with this matter.

7. The Service Provider shall provide and install appropriate electrical power supply at the point stipulated in the Service Provider's design, with feeder cables and electricity

meter inside the leased premises, together with receptacles and lighting fixtures at the points stipulated in the plans.

8. The Service Provider shall provide and install an internal telephone line by connecting the Lessee's telephone outlet to the building's PABX for which there is no charge to the Service Receiver. But the Service Receiver has to provide his own telephone handset.

9. The Service Receiver agrees to pay the service charges in advance according to Clause 3 of this agreement to the Service Provider within the 5th day of each month at the office of the Service Provider, commencing the payment from the time that the Lease agreement in Clause 1 becomes effective. The Service Receiver agrees to pay the service charges as long as he still occupies the leased premises, whether or not the lease agreement remains in effect, until the Service Receiver has completely returned the leased premises to the Service Provider.

10. The Service Receiver accepts that to be in breach of the Lease Agreement is also deemed to be in breach of the Service Agreement and vice versa.

11. Should there arise any difficulty in connection with providing the services in accordance herewith, the Service Provider agrees to correct it at his own expense. But such difficulties shall in no way be construed as just cause for the Service Receiver to terminate the agreement.

12. This agreement shall remain in full force and effect until the lease agreement between the Service Receiver and Service Provider referred to in Clause 1 shall expire.

13. Should the Service Receiver be in default in paying the Service Charges and is notified in writing by the Service Provider for payment to be made within a certain time limit and the Service Receiver does not pay within the specified time, then the Service Provider shall have the right to terminate the agreement and claim the whole amount of the security deposit immediately in accordance with Clause 4 of the Lease Agreement.

    The Service Receiver agrees to pay a late payment fine to the Service Provider at the rate of 15% per annum from the date of default until the outstanding services charges have been completely paid.

14. It is agreed that the service charges mentioned in Clause 3 are the expenses for provision of the services collected from all Service Receivers in proportion to leased areas. The Service Provider reserves the right to adjust the service charge rate in case of future increase in cost for provision of such services.

15. Any dispute arising from the terms and conditions of this agreement or concerning breach of this agreement shall be submitted to the Civil Court in Bangkok. In serving warrants and notices should the Service Provider have affixed the notice to the wall of the Leased Premises, it shall be deemed to have been properly delivered.

This agreement is made in duplicate. The parties to the agreement, each retaining one copy, have read and understood the entire substance of the agreement to their satisfaction and hereunto set their signatures and their company seals in the presence of witnesses.

Service Provider : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL VANCHAI SRIHERUNRUSMEE
(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Service Receiver : i-STT Nation Ltd.

/ss/ ALVIN OEI SERMSIN SAMALAPA
(Mr. Alvin Oei and Mr. Sermsin Samalapa)

Witness : /s/ TIAB PHALEE
(Mr. Tiab Phalee)

Witness :_____
( )

Memorandum Attached to Lease Agreement No. R-103/45 and
Service Agreement No. S-103/45

Dated October 1, 2001

Both parties agree to additional terms as follows:

1. The Lessor allows the Lessee a discounted rent concession of 12 calendar months subsequent to the fitting out period, during that period the rent and service charges shall be payable by the Lessee at the rate of 5/6 (Five/Six) of the agreed contract rate.

2. The Lessor/Service Provider present the following complimentary items without charge:

   2.1 Daily newspaper, The Nation and Krungthep Turakij.

   2.2 Nation Weekly

3. The Service Provider shall allow the Service Receiver the use of 6 parking spaces without charge throughout the period of the agreement. Visitors' carparking for 2 hours free of charge, Baht 10 per hour after all. The additional carparking spaces can be rented at the rate of Baht 500.-per space/month. It is understood and agreed that the Service Provider shall not be held responsible for any loss or damage which may arise with the vehicles using the said parking spaces.

Lessor/Service Provider : Nation Multimedia Group Public Co., Ltd.

/ss/ THANACHAI SANTICHAIKUL VANCHAI SRIHERUNRUSMEE
(Mr. Thanachai Santichaikul and Mr. Vanchai Sriherunrusmee)

Lessee/Service Receiver : i-STT Nation Ltd.

/ss/ ALVIN OEI SERMSIN SAMALAPA
(Mr. Alvin Oei and Mr. Sermsin Samalapa)

Witness : /s/ TIAB PHALEE
(Mr. Tiab Phalee)

Witness :_____
( )

Exhibit 10.68

Reference Number: (Biao 113)

General Factory Lease Agreement

Party A: Shanghai Jin Qiao Pte Ltd

Party B: i-STT Pte Ltd

21st February 2001

Shanghai

Serial Number:

General Factory Lease Agreement

Party A: Shanghai Jin Qiao Pte Ltd

Address: No. 28, New Jinqiao Road

Legal Representative: Yang Xiaoming

Party B: i-STT Pte Ltd

Address: 20 Ayer Rajah Crescent #05-05/08 Singapore 139964

Executive Director: Xiao Deyang

WHEREAS Party A is the legal owner of the Factory for lease (as defined below) and intends to let the Factory for lease to Party B and Party B intends to rent the Factory for lease from Party A;

NOW in accordance with the <Contract Law of the People's Republic of China>, <Law of the People's Republic of China on Urban Real Estate Management>, <Measures on the Lease of Urban Properties>, <Operational Details of (Measures on the Lease of Properties) Implemented in Shanghai>, <Regulations of Property Leasing in Shanghai> and other relevant stipulations and with reference to current practices in China and in the various development districts in Shanghai, both parties reach the following unanimously with regard to the leasing of the Factory:

1. Definition

1.1 Factory for lease: refers to the 1st and 2nd storey of the general-purpose factory at the general-purpose factory block No. 48 [*general-purpose factory lot No. 2 (T52-2)] (No. 1112, Chuanqiao Road) located at Plot 52, Jinqiao Export Processing District, Shanghai that Party A leases out to Party B and Party B rents from Party A. It has a total building area of 8456 metres (the actual area shall be based on the survey conducted by the relevant authority). Its geographical location and structure are indicated in Appendix I <Manual of Technical Indices on the Construction of General-purpose Factory Buildings>.

The variance between the measured area and 8456 square metres must not exceed 338.24 square metres. For variance within 338.24 square metres, the rent shall be refunded for any overpayment or supplemented for any deficiency. In the event that the difference between the measured area and 8456 square metres is larger than 338.24 square metres, Party A shall not charge rental for the area that exceeds 338.24 square metres and Party B shall be allowed to use the area at no cost; in the event that the difference between 8456 square metres and the measured area is larger than 338.24 square metres, Party B shall be entitled to terminate this Agreement.

1.2 Property Management Company: In this Agreement, it refers to the property management company that has signed a property management contract with the owner(s) of the factory district where the factory for lease is located, which shall be responsible for the property management of the said factory district.

1.3 Supporting facilities: Unless otherwise stated, the following two areas shall be included in this Agreement:

(1) Power supply, water supply, telecommunication and gas pipes;

(2) Drainage of rain water, waste water drainage pipes and connections;

Specific details on the relevant supporting facilities of this Agreement are shown in Appendix II <Letter of Confirmation of Supporting Facilities of General-purpose Factory Building for Lease>.

1.4 Places for private use: In this Agreement, these refer to places inside the factory building for lease such as the production workshop, power distribution room, toilets, pantry, auxiliary room and wall spaces.

1.5 Places for common use: In this Agreement, these refer to places inside a general-purpose factory building that are shared and used by the owners and tenants of the entire block of factory building. They include the lobby, the staircase, lifts, engine room for lifts, meter room, water pump room, corridors, loading and unloading platforms, outdoor wall spaces and roofing. Party B shall not occupy places for common use for itself.

1.6 Periodic Year: In this Agreement, it refers to 1st April of the preceding year to 31st March of the following year.

2. The legal status of both parties

2.1 Based on the duplicate copy of the Business Licence of Party A in Appendix III of this Agreement provided by Party A, Party A is an economic entity approved by the state, responsible for the development and management of Shanghai Jinqiao Export Processing District. It is incorporated in China.

2.2 Based on the duplicate copy of the Certificate of Incorporation of Party B in Appendix IV of this Agreement provided by Party B, Party B is a legal economic entity in Singapore, engaging in the development of computer network technology.

Party B shall invest in the establishment of an enterprise with foreign investment in Shanghai Jinqiao Export Processing District. According to the duplicate copy of the approval certificate in Appendix V, issued by the Evaluation and Approval Department for Chinese Investment with regards to Party B establishing a foreign enterprise, the said enterprise has been approved by the state for incorporation, and is an economic entity which is involved in production business. It is incorporated in China.

From the day that the said enterprise with foreign investment is incorporated, both Parties agree that Party B shall transfer all its rights and obligations under this Agreement to the said enterprise and the said enterprise shall rent the general factory stipulated in this Agreement. Both Parties and the said enterprise with foreign investment shall execute an agreement for the relevant changes in due course.

3. Use of Factory for Lease

3.1 Party A has provided Party B with a copy of "Licence for Planning of Construction Project"(Reference Number Hu Pu Jian (00) No. 388) of the Factory for Lease as Appendix VI of this Agreement; the Factory for Lease is used as a production site.

3.2 Party B undertakes that the Factory for Lease shall be used as Party B's production site; its scope of operation includes but not limited to activities such as managing of servers, leasing of machines and motor rooms, etc. Party A confirms that Party B could use the Factory for Lease for 24 hours a day, 365 days a year continuously in a proper manner.

3.3 During the lease period, without prior written consent of Party A and the approval of the relevant departments according to stipulations, Party B shall not change the usage of the Factory for Lease.

4. The Lease Period

4.1 Party B shall rent the Factory for Lease for a period of three years from 1 st April 2001 (hereinafter referred to as "the Date of Commencement of Lease") to 31st March 2004 (hereinafter referred to as "the Expiry Date").

4.2 During the ease period, the right of use of the factory lot for lease shall belong to Party B. Its lawful rights and interests shall be protected by state laws.

5 Rent for the factory lot, property management fee and the mode of payment

5.1 Rent for the factory lot shall be three hundred and twenty-eight dollars and fifty cents (RMB 328.50) per square metre floor area per year. It amounts to two million seven hundred and seventy-seven thousand seven hundred and ninety-six dollars (RMB 2,777,796) per year for a total floor area of 8456 square metres. The property management fee shall be two dollars (RMB 2) per square metre floor area per month which amounts to sixteen thousand nine hundred and twelve dollars (RMB16,912) for the total floor area of 8456 square metres.

5.2 Within 15 days upon signing of this Agreement, Party B shall pay a deposit equivalent to two months' rent to Party A which amounts to four hundred and sixty-two thousand nine hundred and sixty-six dollars (RMB 462,966). From the day Party A hands over the factory lot for lease to Party B, the above-mentioned deposit paid shall be converted to security deposit for renting the factory lot. If Party A is unable to hand over the factory lot for lease to Party B or this Agreement cannot go into effect officially due to causes attributed to Party B, there shall be no refund of the deposit paid by Party B.

5.3 The rent from the date of commencement of the lease to the end of that month shall be remitted by Party B to the account of the bank of deposit designated by Party A within 3 days from the date this Agreement goes into effect. Subsequently, Party B shall remit the rent for the current month to the account of the bank of deposit designated by Party A before the 15th of the month (see the last page of this Agreement).

5.4 The rent of the factory lot for lease shall not be adjusted for the first three periodic years from the Date of Commencement of Lease; from the fourth periodic year, the rent could be adjusted (upwards or downwards) every three periodic years, the adjustment shall not be exceed 5% of the total rent of the previous periodic year. The adjustment shall be based on the trend of fluctuation margin of the general leasing market of similar factories (of similar development district and similar type of factory) in Pudong New District, Shanghai.

5.5 The property management fee for the factory lot for lease shall be paid from the date of hand over of the factory lot. The property management fee from the date of hand over of the factory lot to the end of that month shall be paid directly to the property management company on the day of hand over of the factory lot. Subsequently, Party B shall pay the property management fee directly to the property management company before the 15 th of every month. The bank account of the property management company is as follows:

Shanghai Jin Qiao Pte Ltd
Bank of Deposit: Jinqiao Agricultural Bank General Business Department
Account No.: 033432-10801016449

6. Other expenses for the factory lot for lease and the mode of payment

6.1 If Party B uses the supporting facilities, the articles and clauses of <Confirmation of Supports for the Leasing of General-purpose Factory Buildings> (Appendix II) shall apply.

6.2 During the lease period, expenses on water, electricity, gas and waste water shall be borne by Party B. Of these, charges for electricity at places for private use shall be paid by Party B to the power supply department directly. Charges on water shall be paid by the property management company on behalf of the tenants and Party B shall pay the management company according to the sub-meter reading in the meter room. Charges for water and electricity at the

places for common use within the location of factory for lease shall be entered into the property management fee, and shall not be collected separately.

6.3 During the lease period, Party B shall be responsible for the power consumption in the use of lifts. The property management company shall be responsible for the inspection and repair of lifts and training of operators of Party B. If Party B causes damage to the lift, it shall be responsible for the restoration or compensation.

6.4 Party A shall provide 8 parking lots to Party B free of charge. Of these, four are parking lots for trucks and four are for small passenger vehicles.

6.5 For the procedure of payment, details of charges and details on the use of supporting facilities in Clauses 6.1 – 6.4 mentioned above, see Appendix VII <Guide for Users of General-purpose Factory Buildings in the Jinqiao Export Processing District, Shanghai>.

7. Hand over of factory lot for lease

7.1 Party A shall hand over the factory lot for lease to Party B on 1 March 2001 (referred to as "the date of hand over" below). The relevant quality inspection department should have inspected the factory before Party A informs Party B of the handing over.

7.2 Within three days before the date of hand over of the factory lot for lease, Party A shall present the <(Sample) of Notice of Occupation> similar to Appendix VIII of this Agreement to Party B, informing Party B to go through the formalities of occupation in writing and carry out the hand over of the factory lot for lease. Party B shall send personnel to attend to the hand over on that day. If Party B fails to be present on the day of hand over and fails to request Party A in writing to hand over the factory for lease after 14 days, the factory lot for lease shall be considered as handed over to Party B on the date of hand over.

7.3 On the day of hand over of the factory lot for lease, parties A and B shall sign on the hand over documents similar to the <(Samples) of Documents of Hand Over of Factory Lot for Lease> in Appendix IX to indicate that the hand over of the factory lot for lease has been completed.

7.4 Party A undertakes that the factory for lease shall be completed, inspected and accepted by the relevant government departments and obtain the relevant certification before 15th March 2001; failing which, Party A shall provide Party B with another suitable factory of which qualified certification of completion has been obtained. Party A shall bear all direct expenses incurred by Party B in renovation and removal, and compensate Party B with a renovation period of one month.

8. Sub-lease

8.1 Unless otherwise stated in writing, the lease of the factory lot shall be limited to the production needs of the enterprise with foreign investment of Party B. As Party B plans to work in stages, the first stage of the project shall only utilise part of the factory for lease, utilisation of the remaining parts of the factory shall be based on the market needs and the whole project shall be completed progressively with the commencement of the second stage of the project. In view of the above mentioned reasons, Party A agrees to allow Party B to sub-lease the remaining parts of the factory during this period, but the production works of such tenant shall satisfy the environmental needs and property directives of Jinqiao Export Processing District, and Party B shall not benefit from the sub-lease. Once the second stage of the project commences, Party B shall recover the said sub-leased part of the factory, and use the whole factory for its own production works.

9. Other rights and obligations

9.1 During the lease period, logistic services such as security, cleanliness and maintenance of green areas of Party B's places for private use shall be provided by the property management company. Party B shall hold consultations with the property management company and sign the relevant contracts of engagement. Party B may also determine the companies that provide logistic services by calling tenders. The property management company referred to in this Agreement may participate in the tenders. The credentials of companies that submit tenders must be recognised by Party A.

9.2 Party B shall not damage the supporting facilities by any means. Should there be any damage, Party B shall restore them to the original conditions and bear all expenses.

9.3 During the lease period, should Party A need to carry out package facilities work in the factory for lease, Party B shall be given prior notice. Should Party A cause any damages to Party B's machinery and facilities, Party A shall be liable to restore them to the original condition and bear all such expenses. Works carried out by Party A shall not affect Party B's operations, failing which the rent shall be deducted according to a per day basis.

9.4 Party A shall be responsible for the natural wear and tear of the factory for lease. Party A shall carry out repairs based on the regulated time and maintenance scope according to the maintenance cycle of the general factory of the factory for lease. Party B shall be responsible for the repair or compensation of corresponding monetary losses for damages to the factory for lease due to human factor.

9.5 During the lease period, Party B shall not damage the factory for lease and its equipment and accessory facilities. It shall not be allowed to change the use of the factory for lease, demolish and build at will or damage the structure of the factory for lease.

9.6 During the period of lease, if Party B has to carry out partition, refitting and/or partially reconstruct the factory lot for lease, it must obtain the prior written consent of Party A and the approval of the property management company in accordance with the procedure stipulated in Appendix VII. The above-mentioned actions of Party B shall not violate state and local laws, regulations and stipulations in construction, fire-fighting, environmental protection and industrial hygiene. They shall not damage the factory lot for lease and the building structure of the general-purpose factory building where it is situated. The relevant government departments, Party A and the property management company shall be entitled to carry out supervision and inspection on Party B and demand immediate alteration by Party B. Furthermore, Party B shall not damage the building structure of the factory lot for lease. If there is damage or change in the building structure, Party B shall be responsible for restoration to the original conditions and bear all the expenses. Expenses on partition, decoration or partial reconstruction and the responsibility of maintenance shall be solely borne by Party B.

9.7 Clients who purchase and/or rent the same general factory shall not occupy the places for common use or other areas outside the limits of the factory lot for lease for any reason. When Party B installs equipment and pipes that involves places of neighbouring owners or users, consent of the neighbouring users shall be sought and the normal use of the factory building shall not be affected. Should there be defaults, Party B shall be responsible for removing obstructions and restoration to the original conditions and bear all charges.

9.8 There shall be no construction of any attached buildings or structures to the external walls and roof of the factory lot for lease and the general-purpose factory building where it is situated. If the construction is necessary under special circumstances, written consent from Party A shall be sought.

9.9 Party B shall take care of the environmental hygiene in response to the relevant laws, regulations and provisions of the state and Shanghai City.

9.10 Works such as management of places for common use and environmental management of factory area, etc., shall be handled according to Appendix X <Regulations on the Use, Management, Maintenance and Repair for General-purpose Factory Buildings at the Jinqiao Export Processing District, Shanghai>.

9.11 Party A shall be responsible for items outside the factory for lease such as public sanitation, greenery maintenance, etc.

9.12 Shanghai Jinqiao Export Processing District has already attained the certification of ISO14000. Party B shall adhere to Appendix XI <Environment Regulations at the Jinqiao Export Processing District> of this Agreement.

9.13 During the lease period, should Party A wish to sell the factory for lease, Party B shall enjoy priority to purchase under the same conditions. Party A shall inform Party B in writing three months in advance of its intention to sell the factory for lease. Party B shall reply to Party A in writing as to whether it would like to purchase the factory for lease within 15 days upon receiving Party A's written notice. Should Party B fail to reply in writing before the time frame, it shall be deemed that Party B has abandon its right to purchase the factory for lease. When Party A transfers the factory for lease to another party, Party A must obtain the undertaking of the transferee that it shall, during Party B's lease period, continue to fulfil Party A (owner)'s responsibilities and obligations under this Agreement, and be bounded by the provisions of this Agreement.

9.14 During the lease period, Party B shall enjoy purchasing right of the factory for lease. Party A agrees that if Party B exercises the said right within one year from the date of hand over, and both Parties reach an agreement with regards to the sale of the factory for lease within the same one-year period, Party B shall have the right to purchase the factory at a price of US$430 per square metre. The rent that Party B prior the purchase of the said factory could be converted into the amount paid for purchasing the factory. Should Party B exercise the said right one year after the date of hand over, Party B shall purchase the said factory at market price.

9.15 Before signing the formal Lease Agreement, Party A undertakes as follows:

1) Should there be another party who may rent or purchase the factory beside or near to the factory rented by Party B, Party A shall inform Party B of the party's business dealings, and Party B shall ascertain if the party's operations would damage or affect its own operations. The said damages or effects shall include but not limited to violent vibrations that result in the vibration of Party B's engine room, potential hazards caused by combustible or explosive substances, hazardous or severely polluting gases, loud noises (referring to noises of more than 65 decibels measured at a position of 1 metre away) and strong electro-magnetic interference. In addition, Party B shall confirm that the production it is engaging does not cause any damage or effect on any third party of a neighbouring or/and nearby factory. The damage or effects include but not limited to the engine room vibration caused by violent vibrations, hazards caused by combustible and explosive substances, hazardous or severely polluting gases, loud noises (referring to noises of more than 65 decibels measured at a position of 1 metre away) and strong electro-magnetic interference. However, when disputes arise from the above-mentioned issues, both parties shall employ a third party independent authority for confirmation.

2) Party A shall assist Party B actively in expanding the electrical power of the entire factory for lease to 4500KW.

3) Party A shall assist Party B in the broadband connections between the factory leased by Party B and Shanghai Telecommunication and Jinqiao Telecommunication. Party A assures that there will be optical cable/electrical cable channel within a short distance from the factory leased by Party B, and

at the same time, allows Party B to connect the optical (electrical) cables from the nearest channel to the factory's interior by underground method. The specific works shall be executed according to the prevailing relevant regulations.

4) As Party B expands its business, Party A shall, within its power, allow Party B to use its optical (electrical) cable channel or connect the current factory and the factory newly leased by Party B from Party A using optical cable by breaking ground/breaking road. The above mentioned fees shall be borne by Party B.

5) Party B could install supplementary facilities such as generator, air-conditioning outdoor compressor, and oil storage tank. Party B shall discuss with Party A with regards to the specific location of these facilities before installation.

6) Due to the limitations of the business operated by Party B, fire safety system of the factory for lease shall be changed from sprinkler type to gaseous type. Party A shall assist Party B in the testing and inspection, as well as the licensing matters of the fire safety system.

9.16 Party A shall be responsible for the registration of the lease at the Land and Building Department.

10. Extension and termination of contract

10.1 Upon expiry of the lease period of the factory lot for lease, Party B may apply for extension. To apply for an extension, Party B shall satisfy the following conditions:

(1) Written application for extension should be delivered to Party A at least three months before the expiry of the prevailing lease;

(2) Should the extension exceed the operational period, Party B shall also submit approval document from the Examining and Approving Department for Investment indicating its consent to the extension of Party B's operational period. Such document should be delivered to Party A together with the document mentioned in the previous clause;

(3) Both Parties A and B have agreed on the rent of the factory for lease in accordance with Clause 5.4.

10.2 After Party B submits an application for extension according to Clause 10.1, Party A must not make any legally binding commitments to any third party with regards to lease matters of the factory for lease before the expiry date stipulated in this Agreement.

10.3 If Party B applies for extension according to Clause 10.1, Party A shall grant consent to the application. Both parties shall draw up a new < General Factory Lease Agreement> with reference to the objectives of this Agreement. From the date of expiry to the date when the new < General Factory Lease Agreement> goes into effect, this Agreement continues to be effective and both parties shall fulfil their obligations under this Agreement. However, within six months from the expiry date, should both Parties be unable to sign a new "General Factory Lease Agreement", unless both parties reach a written agreement to continue discussion on the extension of lease, this Agreement shall be terminated automatically. The termination date shall be the first day of the seventh month from the expiry date.

10.4 When any party of this Agreement has to terminate this Agreement in advance due to special reasons, the other party shall be informed in writing three months in advance. With the other party's consent, both parties may agree to terminate this Agreement in advance and draw up the compensation terms in writing.

10.5 If Party A fails to hand over the factory for lease for a period exceeding 60 days from the date of hand over, Party B shall be entitled to cancel this Agreement unilaterally by way of a written notice. If Party B fails to pay rent or any other charges according to schedule for a period exceeding 60 days, Party A shall be entitled to cancel this Agreement unilaterally by way of a written notice. In addition, under notarisation by a notary organisation, Party A shall be entitled to remove all articles such as equipment and machines from the factory lot for lease in the absence of Party B and expenses incurred for the removal and storage of such articles shall be borne by Party B.
Should any party terminate this Agreement in accordance with the above clause of this Agreement, the date of termination shall be the following day of which such party issues a written notice.

10.6 If Party B does not extend the lease under this Agreement after its expiry, or terminates the Agreement in accordance with Clause 10.3 to 10.5, Party B shall return the factory for lease to Party A on the date of expiry or the day following the date of termination. However, should it be difficult for Party B to return the factory for lease on the expiry date or the second day of the termination, the return of the factory could be delayed for two months after obtaining Party A's prior written consent. During the two-month grace period, Party B shall pay monthly rent to Party B according to the rent of the prevailing month of the expiry date, and pay the agreed property management fees and other fees stipulated in this Agreement. For the procedure by which Party B returns the factory for lease, please refer to Appendix VII of this Agreement. Party B shall comply with the following conditions when returning the factory for lease to Party A:

(1) If Party B has carried out partitioning, refitting and/or partial reconstruction, it shall restore the premises to the conditions before the reconstruction;
(2) Party B shall be responsible for the repair or compensation of damages to the facilities or supplementary equipment due to human factor;

(3) Party B shall be responsible for the dismantling works during the restoration of the factory, as well as the removal of the debris by transporting them to the relevant dumping ground for construction debris located outside the factory district;
(4) An acceptance check shall be passed by Party A;
(5) The factory lot for lease shall be returned to Party A intact, including keys and codes.

10.7 Without the prior written consent of Party A, if Party B fails to return the factory for lease according to schedule, apart from the payment of penalty according to this Agreement, it shall also continue to pay the monthly rent for the factory for lease according to the monthly rent on the day of expiry (period less than a month shall be considered as one month). In addition, it shall continue to pay the property management fee and other charges according to this Agreement.

11. Liability for default

11.1 Unless otherwise stated in this Agreement, any of the following events shall constitute a default by Party A:

(1) Failure to hand over the factory for lease to Party B by the date of hand over;
(2) The factory provided fails to comply with the conditions stipulated in this Agreement;
(3) Carry out works in the factory for lease without informing Party B in advance, thus causing damages to Party B's normal production operation;
(4) Violation of other articles and clauses of this Agreement.

11.2 Unless otherwise stated in this Agreement, any of the following events shall constitute a default by Party B:

(1) Sub-lease of the factory for lease without Party A's consent;
(2) Damage to the various supporting facilities that lead to economic losses suffered by Party A;
(3) Damage to the factory for lease or alteration of building structure without permission;
(4) Failure to return the factory to Party A in according with provisions;
(5) Violation of other articles and clauses of this Agreement.

11.3 If any of the events described in Clauses 11.1 (1), (2) or (3) or Clauses 11.2 (1) or (4) occurs, the defaulting party shall pay penalty to the other party. The penalty shall be calculated on a daily basis. The method of calculation is as follows:

(1) The daily penalty shall be 0.3% of the annual rent, ie. Eight thousand three hundred and thirty three dollars and 39 cents (RMB 8,333.39);

(2) Number of days of default = Number of calendar days from the day of occurrence of default to the day the default is rectified;
(3) Amount of penalty = daily penalty × number of days of default.

11.4 In the event of any other default other than those listed in Clause 11.3, the defaulting party shall compensate the other party for its economic losses. If the economic losses caused by the default exceed the penalty, the defaulting party shall also compensate for the part that exceeds the penalty. The compensation shall be jointly computed and determined by both parties according to the extent of economic losses. It may also be determined by a third party with professional authority jointly authorised by both parties.

11.5 Upon occurrence of a default, if the performing party demands for the continual fulfilment of the Agreement, regardless of whether the payment of compensation has been made, the defaulting party shall continue to fulfil its obligations under this Agreement. If the duration of default exceeds 60 days, the abiding party may issue a notice to the defaulting party to terminate this Agreement immediately. The termination of the Agreement shall not affect the abiding party's right to seek compensation.

11.6 Penalties and compensations shall be paid within 10 days from the day of confirmation of liability of default. If the default continues on the day of payment and compensation and thereafter, the defaulting party shall continue to pay for the penalty and compensation until the act of default ceases.

11.7 It shall be considered as overdue payment under one of the following circumstances. For each day overdue, surcharge for overdue payment shall be paid according to the proportion of 0.003 of the outstanding amount.

(1) The rent, property management fee and other charges to be paid by Party B are overdue;
(2) Overdue payment of penalty or compensation by either party.

12. Contract documents

12.1 The appendices of this Agreement are incorporated into this Agreement as they are referred to and shall be an inseparable component of this Agreement. They shall have equal effects as this Agreement.

12.2 The appendices of this Agreement include the following:

(1) Appendix I: < Manual on the Technical Indices of General-purpose Factory Buildings>;
(2) Appendix II: <Confirmation of Supports for the Leasing of General-purpose Factory Buildings>;
(3) Appendix III: Duplicate of Party A's Business Licence;
(4) Appendix IV: Duplicate of Party B's Certificate of Incorporation;

(5) Appendix V: Copy of the approval certificate issued by the Evaluation and Approval Department for Chinese Investment with regards to the enterprise set up by Party B.

(6) Appendix VI: <Licence for Planning of Construction Project> (Reference Number Hu Pu Jian (00) No. 388)

(7) Appendix VII: <Manual for Users of General-purpose Factory Buildings at the Jinqiao Export Processing District, Shanghai>;

(8) Appendix VIII: <(Sample) of Notice for Occupation>;

(9) Appendix IX: <(Sample) of Letter of Hand Over of General-purpose Factory Lot>;

(10) Appendix IX: <Regulations on the Use, Management, Maintenance and Repair for General-purpose Factory Buildings at the Jinqiao Export Processing District, Shanghai>;

(11) Appendix XI: <Environment Regulations at the Jinqiao Export Processing District;

13. Others

13.1 For Party B to rent a factory other than the for lease (limited to within Plot No. 52), should there be an vacant factory or lease withdrawal, Party A shall inform Party B in writing. Under the same conditions, Party B shall enjoy priority to rent or purchase.

13.2 Both parties shall not be responsible for losses to both parties due to Force Majeure. When it is not possible to fulfil the conditions of this Agreement, the party that encounters an event of Force Majeure shall immediately inform the other party. In addition, it shall provide, within 15 days, the details of event and the inability to fulfil the Agreement or part thereof or the reason for the requirement to extend the fulfilment. Both parties may hold consultations to decide whether to terminate the Agreement based on the impact of the Force Majeure event on the fulfilment of the Agreement.

13.3 Occurrences of neighbouring relations between Party B and other parties during the lease period shall be handled according to the relevant stipulations of the state.

13.4 Disputes that arise in the course of fulfilling this Agreement shall be resolved by both parties through consultations. Matters that cannot be resolved through consultations shall be brought to the People's Court at the place where the factory building for lease is located.
In the occurrence of a dispute and the course of its settlement, unless otherwise stated by law or this Agreement, no party shall be allowed to suspend or terminate the fulfilment of the obligations of this Agreement.

13.5 If there are matters not addressed by this Agreement, upon mutual consultations and agreement, separate agreements may be reached as components of this Agreement and they shall posses equal effectiveness as this Agreement.
Upon mutual consultations and agreement, amendments may be made on this Agreement. Before the amended documents go into effect, both parties shall still perform according to the provisions of this Agreement.

13.6 This Agreement shall go into effect after the legal representatives or authorised representatives have signed and Party B has paid the full security deposit according to this Agreement.

13.7 After this Agreement has gone into effect, the laws, regulations and stipulations based on which the state or Shanghai City amends this Agreement or the promulgation of new laws, regulations and stipulations shall have retrospective effect on this Agreement. Both parties shall amend this Agreement timely to ensure that the lawful rights and interests of both parties shall not be harmed.

13.8 This Agreement shall be written in Chinese.

13.9 The signing, validity, interpretation, fulfilment and settlement of disputes of this Agreement shall be under the jurisdiction of the law of the People's Republic of China.

13.10 This Agreement shall be in quintuplicate. Parties A and B shall hold two copies each, the relevant land and building registration department shall hold one copy.

13.11 This Agreement shall be signed by parties A and B on 21 February 2001 in Shanghai for the compliance of both parties.

Party A: Shanghai Jin Qiao Pte Ltd.

Legal Representative or Authorised Agent: /s/ LIU XIAO PING (signed)

Mailing Address: No. 28, New Jinqiao Road, Pudong, Shanghai City,

Postal Code: 201206

Name of Account: Shanghai Jin Qiao Pte Ltd.

Bank of Deposit and Account Number: Jinqiao Agricultural Bank General Business Department
033432 – 18015000341

Party B: i-STT Pte Ltd

Legal Representative or Authorised Agent: LEE CHOONG KWONG (signed)

Mailing Address: 20 Ayer Rajah Crescent #05-05/08 Singapore 139964

Bank of Deposit and Account Number:

Exhibit 10.69

818 W. SEVENTH ST.,
LOS ANGELES, CALIFORNIA

Lease

TENANT: Pacific Internet Exchange Corporation
A Delaware corporation

DATE: April 10, 2000

818 W. SEVENTH ST.,
LOS ANGELES, CALIFORNIA

Lease

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818 W. SEVENTH ST.,
LOS ANGELES, CALIFORNIA 90017

Lease

THIS LEASE is made as of the 10th day of April, 2000, between Downtown Properties, LLC, a California limited liability company (hereinafter called "Landlord"), and Pacific Internet Exchange Corporation, a Delaware corporation, (hereinafter called "Tenant").

SUMMARY OF LEASE TERMS

A. Addresses:

1. Tenant's Premises and Notice Address:

(i) Approximately 33,080 rentable square feet consisting of the entire 6th floor identified as Suite 600 (the "Initial Premises") of the building located 818 W. Seventh St., Los Angeles, California 90017 (the "Building"), and (ii) approximately 33,080 rentable square feet consisting of the entire 8th floor of the Building identified as Suite 800 (the "Must-Take Premises") (the Initial Premises and the Must-Take Premises shall be referred to collectively herein as the "Premises"). Tenant acknowledges that the Initial Premises shall be Tenant's Premises upon execution of the Lease, and that the Must-Take Premises shall be added to the Premises by no later than October 1, 2000.

Notice Address:

Tenant:

Prior to Lease Commencement:

Pacific Internet Exchange Corporation
1100 Alakea Street, 21st Floor
Honolulu, HI 96813
Attn: Bobby Chi

Following Lease Commencement:

Pacific Internet Exchange Corporation
818 West 7th Street, 6th Floor
Los Angeles, CA 90017

With a copy to:

Pacific Internet Exchange Corporation
1100 Alakea Street, 21st Floor
Honolulu, HI 96813
Attn: Bobby Chi

2. Landlord's Notice Address: Downtown Properties, LLC, c/o Beatrice Wu 700 Wilshire Boulevard, Suite 700, Los Angeles, CA 90017

3. Landlord's Address for Rent Payments: Downtown Properties, LLC, c/o Kennedy-Wilson Management Group 700 Wilshire Boulevard, Suite 700, Los Angeles, CA 90017

B. Approximate Rentable Area of the Premises:

Tenant acknowledges that (i) the Initial Premises consists of a total of approximately 33,080 rentable square feet consisting of the entire 6 th floor of the Building, and (ii) the Must-Take Premises consists of approximately 33,080 rentable square feet consisting of the entire 8 th floor identified as Suite 800 of the Building. Tenant acknowledges that the Must-Take Premises shall be added to the Premises in accordance with Section 2.4 below.

C. Lease Term: Fifteen (15) years and three months.

D. 1. Estimated Initial Premises Commencement Date: April 10, 2000.

2. Initial Premises Commencement Date: The later of the following 2 dates:

(a) The Estimated Commencement Date; or

(b) Delivery of a fully executed Lease by Landlord to Tenant.

E. Schedule of Monthly Base Rents:

The following schedule of monthly Base Rents shall apply during the term of the Lease:

Period	Monthly Base Rent
April 1, 2000 – September 30, 2000	$ 60,646.67
October 1, 2000 – June 30, 2005	$ 121,293.33
July 1, 2005 – June 30, 2010	$ 137,833.33
July 1, 2010 – June 30, 2015	$ 159,886.67

An installment of rent in the amount of one (1) full month's Base Rent at the initial rate specified above shall be delivered to Landlord concurrently with Tenant's execution of this Lease and shall be applied against the Base Rent first due hereunder. In the event of any default by Tenant under this Lease which is not cured within the applicable cure period set forth in Section 13.2, Tenant shall be obligated to pay to Landlord, without any further notice from Landlord, a sum equal to all rental abatement granted to Tenant pursuant to Item O below, and no further rental abatement shall be granted for the balance of the Lease term.

F. Base Years for Expenses: Real Estate Taxes – 2000-2001; Operating and Utility Costs – 2000.

G. Tenant's "Percentage Share" of Real Estate Taxes, Operating and Utility Costs: 8.83% for the first nine (9) months of the Lease Term and 17.67% thereafter.

H. Security Deposit: One Hundred Fifty Nine Thousand Eight Hundred Eighty Six Dollars & 67/100 ($159,886.67) as is further described in Section 6 herein. Tenant also shall obtain and maintain during the period described in Section 6 herein an irrevocable standby letter of credit as is further described in Section 6 herein.

I. Permitted Use: General office use and the installation, operation and maintenance of equipment in connection with Tenant's telecommunications switching equipment and business.

J. Maximum Tenant Improvement Allowance: Tenant shall take the Premises "as-is" as further described in Section 35.

K. Tenant's Parking Allotment: One (1) parking privilege for every 1,000 rentable square feet of space leased to Tenant in the Building at the Building's then prevailing rate plus any parking related taxes, as may be adjusted during the Lease Term from time to time, on an "as available" basis. Said parking previlieges shall be located in the parking garage under the Building, and the remainder (if any) in another neighboring parking structure within a reasonable distance of the Building as determined by Landlord in its sole and absolute discretion; provided, however, Landlord agrees that Ten (10) of Tenant's parking privileges shall be located in the parking garage under the Building. Said parking location shall be at such location as Landlord shall designate.

L. Landlord's Brokers: Cushman & Wakefield
Tenant's Brokers: The Seeley Company

M. Riders:

The following exhibits, riders and addenda are attached to and are part of this Lease:

Exhibit A – Floor Plan of Premises
Exhibit B – Rules and Regulations
Exhibit C – Tenant's Work Letter
Exhibit D – Tenant Estoppel Certificate
Exhibit E – Subordination, Non-Disturbance and Attornment Agreement
Exhibit F – Form of Landlord's Consent to Co-Location Agreement
Exhibit G – Form of Letter of Credit
Backup Power Generator Rider
Parking Space Rider
Telecommunications Conduit Rider
Extension Option Rider

N. Guaranty: None

O. Rental Abatement: So long as Tenant is not then in default of the Lease and Tenant has not received three (3) or more notices of events of default, Landlord shall waive Tenant's Monthly Base Rent for the initial Premises for months 1, 2, 3, 4, 5, 13, 14 and 15 of the initial Lease Term thereof, for a total of eight (8) months of rent abatement and shall waive Tenant's Monthly Base Rent for the Must-Take Premises for the first (1st) through seventh (7th) month from and after the date that Landlord delivers possession of the Must-Take Premises to Tenant.

P. a) Tenant's Construction
Representative: _____
Telephone: _____

b) Landlord's
Construction
Representative: Mr. Eric Bender
Telephone: (213) 213-8600, extension 336.

AGREEMENT

1. PREMISES. Landlord hereby leases the Premises to Tenant and Tenant hereby hires and takes the Premises from Landlord. The Premises are located at the address set forth in Section A(I) on page 1 containing approximately the floor area set forth in Section B on page 1 and are more particularly shown on Exhibit "A" attached hereto and incorporated herein by this reference. The office building in which the Premises are located is referred to herein as the "Building." The rentable square footage of the Premises as described above is conclusive as between the parties.

2. TERM.

2.1 The term of this Lease shall commence on the "Commencement Date" indicated in Section D on Page 1 and shall extend for the period set forth in Section C on Page 1. In the event that Landlord, for any reason, cannot tender possession of the Premises to Tenant on or before the "Estimated Commencement Date" indicated in Section D on Page 1, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant in any way as a result of such failure to tender possession. In the event that Landlord cannot tender possession of the Premises to Tenant for any reason other than the acts or omissions of Tenant, Tenant's obligation to pay rent hereunder shall be deferred by a period of time equal to the delay in Landlord's delivery of possession not caused by Tenant. The term of occupancy of the Must-Take Premises shall be co-terminous with the Lease Term. The term of occupancy of the Must-Take Premises shall commence upon the date of delivery of same by Landlord to Tenant.

2.2 In the event that Tenant is allowed to enter into possession of the Premises prior to the Commencement Date, such possession shall be deemed to be pursuant to, and shall be governed by, the terms, covenants and conditions of this Lease, including without limitation the covenant to pay rent, as though the Commencement Date occurred upon the date of taking of possession by Tenant.

2.3 In the event that the Commencement Date falls on other than the first day of a month, rent for any initial partial month of the term hereof shall be appropriately prorated. At the request of either party hereto, both parties shall execute a memorandum confirming the date of commencement of Tenant's rent obligations.

2.4 Notwithstanding anything to the contrary set forth in this Lease, Landlord's obligation to deliver the Initial Premises and Must-Take Premises in accordance with this Lease are conditioned upon Landlord canceling the lease with the tenant which possesses the Initial Premises and relocating the tenants which occupy the Must-Take Premises, respectively, on terms satisfactory to Landlord.

3. RENT. Beginning on the Commencement Date (subject to adjustment pursuant to Section 2.1 above), the base rent ("Base Rent") for the Premises shall be in accordance with the Schedule of Monthly Base Rents set forth in Section E on Page 2. Each installment of Base Rent shall be payable in advance on the first day of each and every month throughout the term of this Lease. Tenant agrees to pay all rent, without offset, demand or deduction of any kind, to Landlord by mail to the address set forth in Section A(3) on page I or in such manner, to such other person or at such other place as Landlord may from time to time designate. Tenant agrees that no payment made to Landlord by check or other instrument shall contain a restrictive endorsement of any kind; and if any such instrument should contain a restrictive endorsement in violation of the foregoing, that endorsement shall have no legal effect whatever, notwithstanding that such item is processed for payment.

4. RENT ESCALATION.

4.1 Tenant shall pay, as monthly rent hereunder, in addition to the Base Rent, the sums provided in this Section 4. Tenant shall be advised of any change, from time to time, in rent escalation payments required hereunder by written notice from Landlord, which shall include information in such detail as Landlord may reasonably determine to be necessary in support of such change. Tenant shall have ninety (90) days after the receipt of Landlord's annual reconciliation billing under Section 4.2 below to protest the change indicated therein, and Tenant's failure to make such protest in a written notice to Landlord within such 90-day period shall be conclusively deemed to be Tenant's agreement to such changes. Notwithstanding any such protest all rent escalation payments falling due after service of such notice shall be made in accordance with such notice until the protest has been resolved, whereupon any necessary adjustment shall be made between Landlord and Tenant. Any audit arising out of such a protest by Tenant shall be done, at Tenant's expense, in accordance with generally accepted auditing and management standards by a certified public accounting firm selected by Tenant and approved by Landlord in its reasonable discretion; provided, however, that if such audit discloses an error in Tenant's favor equal in amount to five percent (5%) or more of Tenant's share of Excess Expenses paid by

Tenant for the applicable annual period, then Landlord shall pay the costs of such audit not exceeding $1,500.00. Such audit shall be performed at Landlord's offices in Los Angeles or at such other location in the United States as Landlord may select from time to time for the maintenance of its accounting records for the Building.

4.2 Following the first December 31 during the term of the Lease, Tenant shall pay Landlord in a single lump sum upon Landlord's reconciliation billing therefor, Tenant's Percentage Share (as defined in Section G on Page 2 of the Lease) of each of the following amounts (collectively, "Excess Expenses"): (1) the amount (if any) by which Real Estate Taxes for the then current tax fiscal year exceed the Real Estate Taxes for the Base Year for Real Estate Taxes set forth in Section F on Page 2; (2) the amount (if any) by which Operating Costs for the just completed calendar year exceed the Operating Costs for the Base Year for Operating Costs set forth in Section F on Page 2; and (3) the amount (if any) by which Utility Costs for the just completed calendar year exceed the Utility Costs for the Base Year for Utility Costs set forth in Section F on Page 2. At the same time Tenant shall also pay to Landlord one-twelfth of Tenant's Percentage Share of such amounts for each month that has commenced since December 31, as estimated payments towards Tenant's share of the Excess Expenses for the following year. (If Landlord estimates in good faith that the Excess Expenses for the following year will exceed the Excess Expenses for the just completed calendar year, Landlord shall notify Tenant in writing of such estimate, and Tenant's new monthly payment shall be one-twelfth of Tenant's Percentage Share of Landlord's estimate of the annual Excess Expenses. Landlord may revise such estimate and Tenant's monthly payment not more than twice during any calendar year.) Following each succeeding December 31, Landlord again shall determine in the same fashion the increase or decrease (if any) in annual Real Estate Taxes, Operating Costs, and Utility Costs over or under those for the previous year. If there is an increase in one or more of the three categories, Tenant shall pay to Landlord in a single lump sum upon Landlord's reconciliation billing Tenant's Percentage Share of the increase. Tenant shall pay Landlord at the same time one-twelfth of Tenant's Percentage Share of such increase (or if Landlord gives a written estimate as described above that Excess Expenses will increase in the new year, then one-twelfth of Landlord's new estimate of annual Excess Expenses) for each month that has then commenced in the new calendar year. If there is a decrease in one or more of the three categories, Landlord shall refund to Tenant or, at Landlord's option, credit against the next rent falling due under the Lease the amount of the overpayment made by Tenant during the preceding calendar year provided that the amount of such refund or credit shall in no event exceed the total payments previously made by Tenant for such calendar year toward Tenant's Percentage Share of excess charges for the category in question. Thereafter, with each month's Base Rent until the next adjustment hereunder, Tenant shall pay one-twelfth of Tenant's Percentage Share of each of the following amounts: (I) the excess (if any) of annual Real Estate Taxes (based on the then-current fiscal year) over the Base Year Real Estate Taxes; (II) the excess (if any) of annual Operating Costs (based on the preceding calendar year) over the Base Year Operating Costs; and (III) the excess (if any) of annual Utility Costs (based on the preceding calendar year) over Base Year Utility Costs. The Real Estate Taxes for any partial fiscal year at the end of the Lease term and the Operating Costs and Utility Costs for any partial calendar year at the end of the Lease term shall be appropriately prorated.

For purposes hereof, "Real Estate Taxes" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, charge, tax or similar imposition (other than net income, inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, public transit or other special district thereof, as against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises and the Building are a part, including, but not limited to, the following:

(i) Any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises;

(ii) Any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of Real Estate Taxes, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June, 1978 Election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Real Property Taxes" for the purpose of this Lease;

(iii) Any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the State, City or Federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or

with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(iv) Any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises;

(v) Any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Building is a part; or

(vi) Reasonable legal and other professional fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce real property taxes.

The definition of "Real Estate Taxes," including any additional tax the nature of which was previously included within the definition of "Real Estate Taxes," shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring by sale or otherwise.

As used in this Lease, the term "Operating Costs" shall mean all costs and expenses of management, operation, maintenance, overhaul, improvement or repair of the Building, the common areas and the site, as determined by standard accounting practices, including the following costs by way of illustration but not limitation:

(a) Any and all assessments imposed with respect to the Building, common areas, and/or the site on which the Building is located, pursuant to any covenants, conditions and restrictions affecting the site, common areas or Building;

(b) Any costs, levies or assessments resulting from statutes or regulations promulgated by any governmental authority in connection with the use or occupancy of the Building or the Premises;

(c) Costs of all insurance obtained by Landlord;

(d) Wages, salaries and other labor costs (including but not limited to social security taxes, unemployment taxes, other payroll taxes and governmental charges and the costs, if any, of providing disability, hospitalization, medical welfare, pension, retirement or other employee benefits, whether or not imposed by law) of employees, independent contractors and other persons engaged in the management, operation, maintenance, overhaul, improvement or repair of the Building;

(e) Building management office and storage rental;

(f) Management and administrative fees;

(g) Supplies, materials, equipment and tools;

(h) Costs of, and appropriate reserves for, repair, painting, resurfacing, and maintenance of the Building, the common areas, the site and the parking facilities, and their respective fixtures and equipment systems, including but not limited to the elevators, the structural portions of the Building, and the plumbing, heating, ventilation, air-conditioning, telephone cable riser, and electrical systems installed or furnished by Landlord;

(i) Depreciation on a straight-line basis and rental of personal property used in maintenance;

(j) Amortization on a straight-line basis over the useful life (together with interest at the interest rate defined in Subsection 33.9 of this Lease on the unamortized balance) of all costs of a capital nature (including, without limitation, capital improvements, capital replacements, capital repairs, capital equipment and capital tools):

(1) reasonably intended to produce a reduction in Operating Costs, Utility Costs or energy consumption; or

(2) required under any governmental or quasi-governmental law, rule, order, ordinance or regulation that was not applicable to the Building at the time it was originally constructed; or

(3) for repair or replacement of any Building equipment needed to operate the Building at the same quality levels as prior to the replacement;

(k) Costs and expenses of gardening and landscaping;

(l) Maintenance of signs (other than signs of tenants of the Building);

(m) Personal property taxes levied on or attributable to personal property used in connection with the Building, the common areas, or the site;

(n) Costs of all service contracts pertaining to the Premises, the Building or the site;

(o) Reasonable accounting, audit, verification, legal and other consulting fees;

(p) Costs and expenses of lighting, janitorial service, cleaning, refuse removal, security and similar items, including appropriate reserves;

(q) Any costs incurred with respect to a transportation systems manager, rider share coordinator or any private transportation system established for the benefit of tenants in the Building, whether or not imposed by any governmental authority;

(r) If the Building has a helipad, its costs to the extent not covered by user fees; and

(s) Fees imposed by any federal, state or local government for fire and police protection, trash removal or other similar services which do not constitute Real Estate Taxes.

Notwithstanding anything to the contrary in the Lease, Operating Costs and Utility Costs shall not include (i) costs incurred in connection with the original construction of the Building or Premises and accompanying site improvements; (ii) interest, principal, late charges, default fees, prepayment penalties or premiums on any debt owed by Landlord, including any mortgage debt; (iii) costs of correcting defects in or inadequacy of the initial design or construction of the Building or Premises; (iv) expenses resulting from the negligence of Landlord, its agents, servants or employees, or another tenant; (v) legal fees, space planners' fees, real estate brokers' leasing commissions and advertising expenses incurred in connection with the development or leasing of the Building or Premises; (vi) costs for which Landlord is or should be reimbursed by any tenant or occupant of the Building or by insurance by its carrier or any tenant's carrier or by anyone else; (vii) any bad debt loss, rent loss, or reserves for bad debts or rent loss; (viii) costs of services provided to other tenants in the Building which are not provided to Tenant or for which Tenant separately pays or is separately charged; (ix) costs associated with the operation of the business of the Landlord, as the same are distinguished from the costs of operation of the Premises or Building, including company accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Premises or Building costs (including attorney fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations respecting Landlord and/or the Building; (x) the wages and benefits of any on-site employees above the level of Building manager; (xi) the wages and benefits of any employee who does not devote substantially all of his or her time to the Building unless such wages and benefits are allocated to reflect the actual time spent on operating and managing the Building vis-a-vis time spent on matters unrelated to operating and managing the Building, (xii) amounts paid as ground rental by Landlord; (xiii) costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for tenants in the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Building; (xiv) costs paid to Landlord or to affiliates of Landlord for services in the Building, including management fees, to the extent the same exceed or would exceed the costs for such services if rendered by unaffiliated third parties on a competitive basis; (xv) costs for which Landlord has been compensated by a management fee; (xvi) costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Building, and (xvii) costs of asbestos removal work excluded from Operating Costs under Section 32.4 below.

For purposes hereof, "Utility Costs" shall include all charges, surcharges and other costs of all utilities paid for by Landlord in connection with the Premises and/or Building, including without limitation costs of heating, ventilation and air conditioning for the Premises and/or Building, costs of furnishing gas, electricity and other fuels or power sources to the Premises and/or Building, and costs of furnishing water and sewer services to the Premises and/or Building.

The term "Building" as used in this Section 4.2 shall be deemed to include not only the Building but also any parking facility owned, leased or operated by Landlord in order to meet the parking requirements of the Building.

If the average occupancy of the rentable area of the Building during the Tenant's Base Year for Operating and Utility Costs as set forth in Section F on page 2 or during any other calendar year of the Lease term is less than ninety-five percent (95%) of the total rentable area of the Building, the Operating Costs and Utility Costs shall be adjusted by Landlord for such Base Year or other calendar year, prior to the pass-through of Operating Costs and Utility Costs to Tenant pursuant to this Section 4.2, to reflect what they would have been had ninety five percent (95%) of the rentable area been occupied during that year. In making such calculation, the Landlord's reasonable opinion of what portion, if any, of each cost was affected by changes in occupancy shall be binding upon the parties.

5. TAX ON TENANT'S PROPERTY; OTHER TAXES.

5.1 Tenant shall be liable for, and shall pay at least ten (10) days before delinquency, and Tenant hereby indemnifies and holds Landlord harmless from and against any liability in connection with, all taxes levied directly or indirectly against any personal property, fixtures, machinery, equipment, apparatus, systems and appurtenances placed by Tenant in or about, or utilized by Tenant in, upon or in connection with, the Premises ("Equipment Taxes"). If any increased by the inclusion therein of a value placed upon such personal property, fixtures, machinery, equipment, apparatus, systems or appurtenances of Tenant, and if Landlord, after written notice to Tenant, pays the Equipment Taxes or taxes based upon such an increased assessment (which Landlord shall have the right to do regardless of the validity of such levy, but only under proper protest if requested by Tenant prior to such payment and if payment under protest is permissible), Tenant shall pay to Landlord upon demand, as additional rent hereunder, the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment; provided, however, that in any such event Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, but at no cost to Landlord, to bring suit in any court of competent jurisdiction to recover the amount of any such tax so paid under protest, and any amount so recovered shall belong to Tenant.

5.2 If the tenant improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which tenant improvements conforming to Landlord's building standards in other space in the Building are assessed, then the real property taxes and assessments levied against Landlord or Landlord's property by reason of such excess assessed valuation shall be deemed to be Equipment Taxes and shall be governed by the provisions of Section 5.1. Any such amounts, and any similar amounts attributable to excess improvements by other tenants of the Building and recovered by Landlord from such other tenants under comparable lease provisions, shall not be included in Real Estate Taxes for purposes of rent escalation under Section 4 of this Lease.

5.3 Tenant shall pay, as additional rent hereunder, upon demand and in such manner and at such times as Landlord shall direct from time to time by written notice to Tenant, any excise, sales, privilege or other tax, assessment or other charge (other than income or franchise taxes) imposed, assessed or levied by any governmental or quasi-governmental authority or agency upon Landlord on account of this Lease, the rent or other payments made by Tenant hereunder, any other benefit received by Landlord hereunder, Landlord's business as a lessor hereunder, or otherwise in respect of or as a result of the agreement or relationship of Landlord and Tenant hereunder.

6. SECURITY DEPOSIT. A deposit (the "Security Deposit") in the amount set forth in Section H on page 2 shall be paid by Tenant upon execution of this Lease and shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rent or a measure of Landlord's damages in case of default by Tenant. Upon the occurrence of any breach or default under this Lease by Tenant, Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit or any portion thereof to the extent necessary to make good any arrearages of rent or any other damage, injury, expense, or liability caused to Landlord by such breach or default. Following any application of the Security Deposit, Tenant shall pay to Landlord on demand an amount to restore the Security Deposit to its original amount. In the event of bankruptcy or other debtor relief proceedings by or against Tenant, the Security Deposit shall be deemed to be applied first to the payment of rent and other charges due Landlord, in the order that such rent or charges became due and owing, for all periods prior to filing of such proceedings. Landlord shall not be required to keep the Security Deposit separate from its general funds. Upon termination of this Lease any remaining balance of the Security Deposit shall be returned by Landlord to Tenant within fourteen (14) days after termination of Tenant's tenancy. Tenant also shall obtain and maintain during the period set forth below, at Lessee's expense, an irrevocable standby letter of credit (the "LC") issued by a reputable bank acceptable to Landlord it its reasonable discretion, in favor of Landlord and presentable for collection in the City of Los Angeles which

may be drawn upon by Landlord upon written demand on sight delivered by Landlord to the issuer thereof stating that a material default has occurred hereunder which has not been cured within the applicable notice and cure periods provided for in this Lease, in the event that Tenant materially breaches this Lease and thereby fails to reimburse Landlord for the unrecovered portion of real estate brokers' commissions and tenant improvement costs incurred by Landlord in respect of this Lease, within any applicable notice and cure periods provided therefor. The LC shall be in the initial principal amount of $900,000, which automatically is renewed annually at the commencement of each Lease Year during the initial term of this Lease. The principal amount of the LC, if not previously drawn thereon by Landlord and so Iong as Tenant is not then in default of this Lease, shall be reduced by $360,000 at the beginning of the third Lease year, another $270,000 at the beginning of the fifth Lease year. From and after the seventh Lease Year, Tenant shall no longer required to obtain and maintain the LC, and at the commencement of the seventh Lease Year, Landlord shall return the original LC if and to the extent the same has not previously been drawn upon. The LC shall be substantially in the form attached hereto as Exhibit G.

7. LATE PAYMENTS. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note or other obligation secured by any encumbrance covering the Premises or the Building of which the Premises are a part. Therefore, if any monthly installment of rent is not received by Landlord within five (5) days of additional rent, the sum of five percent (5%) of the overdue amount as a late charge. Landlord's acceptance of any late charge, or interest pursuant to Section 33.9, shall not be deemed to be liquidated damages, nor constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect. Further, in the event such late charge is imposed by Landlord for 2 consecutive months for whatever reason, Landlord shall have the option to require that, beginning with the first payment of rent due following the imposition of the second consecutive late charge, rent shall no longer be paid in monthly installments but shall be payable 3 months in advance.

8. USE OF PREMISES. Tenant, and any permitted subtenant or assignee, shall use the Premises only for the use described in Section I on page 2. Any other use of the Premises is absolutely prohibited. Tenant shall not use or occupy the Premises in violation of any recorded covenants, conditions and restrictions affecting the land on which the Building is located nor of any law, ordinance, rule and regulation. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Building or property located therein and shall comply with all rules, orders, regulations and requirements of any applicable fire rating bureau or other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord as additional rent for any additional premium charged for any insurance policy by reason of Tenant's failure to comply with the provisions of this Section 8. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in first class repair and appearance. Tenant shall not place a load upon the Premises exceeding the average pounds of live load per square foot of floor area specified for the Building by Landlord's architect, with any partitions to be considered a part of the live load. Landlord reserves the right to prescribe the weight and position of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof. Tenant's business machines and mechanical equipment which cause vibration or noise that may be transmitted to the Building structure or to any other space in the Building shall be so installed, maintained and used by Tenant as to eliminate such vibration or noise. Tenant shall be responsible for the cost of all structural engineering required to determine structural load. In any event, unless specifically authorized herein, Tenant shall not prepare or serve, or authorize the preparation or service of, food or beverages in the Premises, except only the occasional preparation of coffee, tea, hot chocolate and other such common refreshments for Tenant and its employees. Tenant shall not conduct any auction in or about the Premises or the Building without Landlord's prior written consent.

9. BUILDING SERVICES.

9.1 Throughout the term of this Lease, subject to shortage and accidents beyond Landlord's reasonable control, and subject to reimbursement pursuant to Section 4.2, Landlord shall repair and maintain all structural elements of the Building and common areas (including, without limitation, the structural walls, doors, floors, ceilings, roof, elevators, stairwells, lobby, heating system, air conditioning system, telephone cable riser for Building-standard service from the Building's main terminal to the terminal box on the same floor as the Premises [but excluding Tenant's telephone

equipment and the cable and wiring from such equipment to the terminal box], plumbing and electrical wiring) and maintain the exterior of the Premises, including grounds, walks, drives and loading area, if any. Tenant shall reimburse Landlord upon demand, as additional rent hereunder, for the cost of any repairs or extraordinary maintenance necessitated by acts of Tenant or Tenant's employees, contractors, agents, licensees or invitees. Landlord shall not be responsible for the repair and maintenance of Tenant installed systems or improvements, including, but not limited to any heating or air conditioning system installed by Tenant.

9.2 Provided that Tenant is not in default hereunder, subject to shortages and accidents beyond Landlord's reasonable control, Landlord shall furnish building standard heating and air conditioning service Monday through Friday from 8:00 A.M. to 6:00 P.M., and Saturday from 8:00 A.M. to 1:00 P.M., except for holidays. No heating or air conditioning will be furnished by Landlord on Sundays, holidays or during hours other than as set forth above, except upon prior arrangement with Tenant and at an extra charge based on Landlord's actual cost plus Landlord's administrative fees, as may be agreed to between Landlord and Tenant. For purposes of this Section 9.2, "holidays" shall mean and refer to the holidays of Christmas, New Year's Day, Martin Luther King Day, President's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and the day after Thanksgiving, as those holidays are defined, recognized or established by governmental authorities or agencies from time to time and such other days the New York Stock Exchange is closed.

Notwithstanding the foregoing, Tenant shall have the right to install in the Premises, at its expense, self-contained 24-hour heating, ventilating and air conditioning units as may be reasonably determined by Landlord to be necessary in order to maintain building air conditioning standards resulting from Tenant's use of the Premises, including its installation and operation of telecommunications and computer equipment or other special equipment or facilities placing a greater burden on the air conditioning system than would general office use. The installation and use of such self-contained 24-hour heating, ventilating and air conditioning unit is subject to compliance with the other provisions of this Lease, including but not limited to obtaining Landlord's prior written consent to the plans and specifications for the work and electrical requirements of the units. Tenant shall be permitted to exhaust such systems out of the southern side of the Building, subject to Landlord's prior review and approval, which approval shall not be unreasonably withheld. Tenant shall pay all costs of electricity for such units. At Landlord's election, the electrical requirements for such units, as well as all of Tenant's other electrical requirements, shall be separately metered to Tenant at Tenant's expense as described below. Tenant shall have the right to remove and/or cap off the existing HVAC systems servicing the Premises. At Landlord's option, at the expiration or earlier termination of the Lease, Tenant shall restore, at its sole cost and expense, the HVAC system to its original condition.

Landlord shall furnish electric current to the Premises in amounts reasonably sufficient for normal business use, including operation of building standard lighting and operation of typewriters and standard fractional horsepower office machinery, all subject to the obligations of Tenant for payment of the costs of such electricity as provided herein. Tenant agrees that, at all times during the term of this Lease, Tenant's use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installation in the Building. Any transformer or other special equipment required to connect Tenant's facilities to Landlord's electrical supply shall be provided and installed at Tenant's expense. Landlord may, at its election and at Tenant's sole cost and expense, separately meter at Tenant's expense the electrical usage of some or all of Tenant's equipment, facilities or Premises. Tenant shall pay the charges for all such separately metered electrical usage within fifteen (15) days after receipt of a billing therefor. Landlord shall not use its approval rights to arbitrarily or discriminatorily prevent Tenant's installation of and use of equipment customarily used in a telecommunications business, but Landlord may impose reasonable conditions on such installation and use, regarding such matters as the placement, venting, power sources, and structural requirements for such equipment.

Anything in this Section 9 notwithstanding, and subject to Tenant obtaining Landlord's prior written consent of the plans and specifications not to be unreasonably withheld and complying with Section 29 and the other provisions of this Lease, in lieu of Landlord providing any electric power to the Premises, Tenant may make arrangements to obtain such electric supply directly from the Department of Water and Power, at Tenant's own cost and expense. Landlord makes no representations or warranties regarding such arrangements, but would cooperate with Tenant and the Department of Water and Power reasonably and in good faith in this regard. As part of such arrangement, Tenant is to contract with, and be billed directly by, the Department of Water and Power. Tenant agrees to pay such bills when due. Under such arrangement, Landlord will not install, maintain or read the D.W.P. meter nor bill Tenant for such electric service or usage. The location of any new vault or transformer space required in the basement of the Building for this purpose (whether or not located in the Department of Water and Power's existing vault, if that is possible) is subject to Landlord's reasonable approval, as part of Landlord's prior written approval of the plans and specifications. Tenant shall be liable for all costs and expenses incurred in connection with such an arrangement including, but not limited to, costs of equipment, materials, construction, installations and hook-ups.

Tenant shall pay monthly upon billing as additional rent under this Lease such sums as Landlord's building engineer may reasonably determine to be necessary in order to reimburse Landlord for the additional cost of any utilities which have not been separately metered to Tenant (including, without limitation, electricity, gas and other fuels or power sources, and water, and Landlord's reasonable costs of administration, which costs of administration shall not exceed three percent (3% of the other costs) attributable to any requirements in excess of those for normal office use by reason of the operation of computer or telecommunications equipment or other special equipment or facilities, or attributable to Tenant's conducting business beyond the business hours described in the first sentence of this Section 9.2

Any utility charges billed directly to Tenant shall not be included in the Building's "Utility Costs" for purposes of Section 4 above. Any extra maintenance charges or service calls attributable to the actions of Tenant shall be payable by Tenant to Landlord upon demand, as additional rent hereunder.

9.3 Landlord shall furnish unheated water from mains for drinking, lavatory and toilet purposes drawn through fixtures installed by Landlord, or by Tenant with Landlord's express prior written consent, and heated water for lavatory purposes from regular building supply in such quantities as required in Landlord's judgment for the comfortable and normal use of the Premises. Tenant shall pay Landlord for additional water which is furnished for any other purpose. The amount that Tenant shall pay Landlord for such additional water shall be the average price per gallon charged to the Landlord for the Building by the entity providing water.

9.4 Tenant shall provide its own janitorial services to the Premises subject to Landlord's prior written approval of the service provider in Landlord's sole and absolute discretion. Tenant shall submit to Landlord a list of proposed janitorial service providers, with references, upon commencement of this Lease for Landlord to approve or disapprove without undue delay. Only those service providers who have been approved by Landlord may perform janitorial services. Notwithstanding the foregoing, Landlord shall furnish janitorial service (including washing of windows with reasonable frequency as determined by Landlord) for the common area, to the extent necessitated by normal office use of the Premises, Monday through Friday, holidays excepted. Landlord shall have no obligation to furnish janitorial service for any portion of the Premises. Tenant shall keep all such portions of the Premises in a clean and orderly condition at Tenant's sole cost and expense. In the event that Tenant shall fail to keep or cause to keep such portion of the Premises in a clean and orderly condition, Landlord may do so and any costs incurred by Landlord in connection therewith shall be payable by Tenant to Landlord upon demand, as additional rent hereunder. Tenant shall also pay to Landlord, as additional rent hereunder, amounts equal to any increase in cost of janitor service in and about the common areas if such increase in costs is due to (a) use of the Premises by Tenant during hours other than normal business hours, or (b) location in or about the Premises of any fixtures, improvements, materials or finish items (including without limitation wall coverings and floor coverings) other than those which are of the standard type adopted by Landlord for the Building. Only those persons who have been approved by Landlord may perform janitorial services.

9.5 Landlord shall furnish passenger elevator service and freight elevator service in common with Tenant and other tenants Monday through Friday from 8:00 A.M. to 6:00 P.M. and Saturday from 8:00 A.M. to 1:00 P.M. Landlord shall provide limited passenger elevator service daily at all times such normal passenger service is not furnished. One elevator shall be designated as a freight elevator for use by the Building's tenants on a non-exclusive basis. The designated freight elevator will be made available to the Building's tenants for the delivery of equipment, tools and construction materials between the hours of 6:00 p.m. to 7:00 a.m. Monday through Friday; after 3:00 p.m. on Saturdays, and at any time on Sundays, with 24-hour advance notice and subject to prior reservations.

9.6 Landlord does not warrant that any service will be free from interruptions caused by repairs, renewals, improvements, changes of service, alterations, strikes, lockouts, labor controversies, accidents, inability to obtain fuel, steam, water or supplies or other cause. Landlord agrees to give Tenant notice of any extended interruptions of which Landlord has prior knowledge. No interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, nor relieve Tenant from payment of rent or performance of Tenant's other obligations under this Lease except as provided below in this Section 9.6. Landlord shall not be responsible for correcting any such interruption in service which is not curable by Landlord on a commercially reasonable basis, as determined by Landlord in its sole discretion. Subject to Section 11 below, and subject to Landlord's rights to recover certain costs under other provisions of this Lease, if Landlord determines that such interruption in service is curable on such a commercially reasonable basis, Landlord shall make good faith efforts to so correct the interruption within a reasonable time after Landlord receives written notice from Tenant of the interruption in service. In doing such work Landlord shall use commercially reasonable, good faith efforts to interfere as little as reasonably practicable with the conduct of Tenant's business in the Premises, without, however, being obligated to incur liability for overtime or other premium payment to its agents, employees or contractors in connection therewith. Landlord shall in no event be liable for any injury to or interference with Tenant's business or any punitive, incidental or consequential damages, whether foreseeable or not,

arising from the making of or failure to make any repairs, alterations or improvements, or provision of or failure to provide or restore any service in or to any portion of the Building, including the Premises, or the fixtures, appurtenances and equipment therein. If any interruption of utility service, not caused by Tenant or its employees, agents or invitees, is not restored within five (5) consecutive business days after Tenant provides Landlord with written notice of the cessation of such utilities, then Tenant shall be entitled to abatement of rent for the Premises to the extent that Tenant does not occupy the Premises for the conduct of business for each day of cessation of such utility services from and after the fifth (5th) business day of such cessation. Tenant shall not be entitled to any abatement or reduction of rent or other remedy by reason of Landlord's failure to furnish any of the services or Building systems called for by this Lease whether such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or any other cause, except due to Landlord's gross negligence or willful misconduct. As a material inducement to Landlord's entry into this Lease, Tenant waives and releases any rights it may have to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code.

10. CONDITION OF PREMISES. By occupying the Premises, Tenant shall be deemed to accept the same and acknowledge that they comply fully with Landlord's covenants and obligations hereunder, subject to completion of any items which it is Landlord's responsibility hereunder to furnish and which are listed by Landlord and Tenant upon inspection of the Premises prior to the Commencement Date. Tenant acknowledges that neither Landlord nor any agent, employee or representative of Landlord has made any representation or warranty with respect to any matter, including but not limited to any matter regarding the Building or Premises, the applicable zoning or the effect of other applicable laws, or the suitability or fitness of the Building or Premises for the conduct of Tenant's business or any other purpose. Tenant is relying solely on its own investigations with respect to all such matters. During the term of this Lease, Tenant shall maintain the Premises in as good condition as when Tenant took possession, ordinary wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted, and shall repair all damage or injury to the Building or to fixtures, appurtenances and equipment of the Building caused by Tenant's installation or removal of its property or resulting from the negligence or tortious conduct of Tenant, its employees, contractors, agents, licensees and invitees. In the event of failure by Tenant to perform its covenants of maintenance and repair hereunder, Landlord may perform such maintenance and repair, and any amounts expended by Landlord in connection therewith shall be payable by Tenant to Landlord upon demand, as additional rent hereunder.

11. DAMAGE TO PREMISES OR BUILDING.

11.1 In the event that the Building should be totally destroyed by fire or other casualty, this Lease shall terminate as of the date of such casualty. If the Building is damaged but not totally destroyed by the casualty or if there is an interruption in services or utilities provided by Landlord pursuant to Section 9.6 of this Lease, and if such damage or interruption in services or utilities prevents Tenant's beneficial use of all or a substantial portion of the Premises, then Landlord shall notify Tenant in writing, within thirty (30) days after the date Tenant's beneficial use is so prevented, of whether Landlord intends to restore the Building or the services or utilities in question and of how long, in Landlord's opinion, the restoration will take to complete. In the event that the repairs and restoration can, in Landlord's reasonable opinion, be completed within one hundred eighty (180) days after the date Tenant's beneficial use is so prevented, and Landlord will receive insurance proceeds sufficient to cover the costs of such repairs and restoration, Landlord shall restore the Building or the services or utilities in question. In the event the Premises or a substantial portion of the Building or the delivery system for Building services or utilities should be so damaged or destroyed that restoration or repairs cannot, in Landlord's opinion, be completed within one hundred eighty (180) days after the date Tenant's beneficial use is so prevented, or Landlord will not receive insurance proceeds sufficient to cover the costs of such repairs and restoration, Landlord may at its option terminate this Lease upon notice to Tenant, or Landlord may elect to proceed to restore the Building. Similarly, in the event Landlord's notice notifies Tenant that the restoration in Landlord's opinion will not be completed within one hundred eighty (180) days after the date Tenant's beneficial use is so prevented, Tenant shall have twenty (20) days from the date of Tenant's receipt of Landlord's notice to elect to terminate this Lease by delivering written notice of such termination to Landlord. If either Landlord or Tenant terminates this Lease as provided above, such termination shall be effective immediately upon the other party's receipt of the notice of termination. In the event that Landlord is obligated or elects to restore the Building or the services or utilities in question, Landlord shall commence such work reasonably promptly and shall proceed with reasonable diligence to restore the Building or the services or utilities to substantially the condition in which they were immediately prior to the casualty, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, alterations, decorations or other improvements which may have been constructed by or specifically for Tenant, or by or for other tenants within the Building.

If neither Landlord nor Tenant terminates this Lease due to the casualty, the Lease shall remain in full force and effect. After Landlord completes Landlord's restoration work on the Premises (i.e., any necessary repair work on the

Building shell and the Building systems originally provided by Landlord in the core of the Building), Tenant shall diligently complete Tenant's repairs to its tenant improvements. The parties shall cooperate in performing their respective repairs simultaneously if, in Landlord's reasonable opinion, that is feasible and appropriate. Tenant shall have the right to terminate this Lease upon notice served upon Landlord prior to actual completion of Landlord's restoration work on the Premises if such restoration work is not substantially completed within two hundred seventy (270) days after the date Tenant's beneficial use is first prevented (provided, however, that if Landlord's original notice to Tenant estimated that the restoration work would take more than one hundred eighty (180) days after the date Tenant's beneficial use is so prevented, and Tenant did not elect to terminate the Lease on that basis, then Tenant shall not be entitled to terminate the Lease pursuant to this sentence unless Landlord fails to substantially complete such restoration work at least within 95 days after the estimated restoration period given in Landlord's original notice). For purposes of this Section, "substantial completion" of Landlord's work shall mean completion to such a degree that Tenant can commence in the Premises or the damaged portion thereof its own reconstruction of tenant improvements as contemplated by this Lease. "Substantial completion" shall not require full completion of all "punch list" type items which do not materially affect Tenant's use of the Premises. Lease termination, to the extent provided above, shall be Tenant's sole remedies. Notwithstanding the foregoing to the contrary, if the damage is due to the negligence or willful misconduct of Tenant or any of Tenant's agents, employees or invitees, Tenant shall not be permitted to exercise its right of Lease termination. Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration.

Landlord and Tenant agree that if the damage or destruction was not the result of the willful misconduct of Tenant or Tenant's employees, contractors, licensees or invitees, then Tenant shall be provided with a proportionate abatement of Basic Rent and other rental due hereunder based on the rentable square footage of the Premises rendered unusable and not used by Tenant. The proportional abatement, if any, shall be provided during the period beginning on the later of (a) the date of the damage or destruction or (b) the date on which Tenant ceases to occupy the Premises and ending on the date of substantial completion of Landlord's restoration obligations as provided in this Section 11.

11.2 In the event of any damage or destruction of all or any part of the Premises or any interruption in utilities or services, Tenant shall immediately notify Landlord thereof.

11.3 In the event any holder of a mortgage or deed of trust on the Building should require that the insurance proceeds payable upon damage or destruction to the Building by fire or other casualty be used to retire the debt secured by such mortgage or deed of trust, or in the event any lessor under any underlying or ground lease should require that such proceeds be paid to such lessor, Landlord shall in no event have any obligation to rebuild, and at Landlord's election this Lease shall terminate.

11.4 Except as set forth in Section 28 below, with the exception of insurance required to be carried by Tenant under Section 28 of this Lease, any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Premises shall be for the sole benefit of the party carrying such insurance and under its sole control. Landlord shall not be required to carry insurance of any kind on Tenant's property and, except by reason of the breach by Landlord of any of its obligations hereunder, shall not be obligated to repair any damage thereto or to replace the same.

11.5 In addition to its termination rights in Subsection 11.1 above, Landlord shall have the right to terminate this Lease if any damage to the Building or Premises occurs during the last twelve (12) months of the Term of this Lease and Landlord estimates that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Lease Term, or (b) sixty (60) days after the date of such casualty.

11.6 Tenant, as a material inducement to Landlord's entering into this Lease, irrevocably waives and releases its rights under the provisions of Sections 1932(2) and 1933(4) of the California Civil Code (and any successor statutes permitting Tenant to terminate this Lease as a result of any damage or destruction), it being the intention of the parties hereto that the express terms of this Lease shall control under any circumstances in which those provisions might otherwise apply.

12. EMINENT DOMAIN.

12.1 In the event that the whole of the Premises, or so much thereof as to render the balance unusable to Tenant for the purposes leased hereunder, as reasonably determined by Landlord, shall be lawfully condemned or taken in any manner for any public or quasi-public use, or conveyed by Landlord in lieu thereof (a "Taking"), this Lease and the term hereby granted shall forthwith cease and terminate on the date of the taking of possession by the condemning authority (the "Date of Taking").

12.2 In the event of a Taking of a portion of the Premises which does not result in the termination of this Lease pursuant to Section 12.1, above, the Base Rent shall be abated in proportion to the part of the Premises so taken and thereby rendered unusable to Tenant for the purposes leased hereunder, as reasonably determined by Landlord.

12.3 In the event that there is a Taking of a portion of the Building other than the Premises, and if, in the opinion of Landlord, the Taking is so substantial as to render the remainder of the Building uneconomic to maintain despite reasonable reconstruction or remodeling, or if it would be necessary to alter the Building or Premises materially, Landlord may terminate this Lease by notifying Tenant of such termination within sixty (60) days following the Date of Taking, and this Lease shall end on the date specified in the notice of termination, which shall not be less than sixty (60) days after the giving of such notice.

12.4 No temporary Taking of the Building or Premises and/or of Tenant's rights therein or under this Lease shall terminate this Lease or give Tenant any right to abatement of rent hereunder. Tenant shall be entitled to receive such portion of any award as is specifically made for such a temporary use with respect to the period of the Taking which is within the term of this Lease, provided that the Taking renders the Premises unusable to Tenant for the purposes leased hereunder, as reasonably determined by Landlord. If such Taking shall remain in force at the expiration or earlier termination of this Lease, then Tenant shall pay to Landlord a sum equal to the reasonable costs of performing Tenant's obligations under Section 15 with respect to Tenant's surrender of the Premises and, upon such payment, shall be excused from such obligations. For purposes of this Section 12.4, a temporary Taking shall be defined as a Taking for a period of two hundred seventy (270) days or less.

12.5 Except for the award in the event of a temporary Taking as contemplated in Section 12.4, above, Tenant hereby releases and shall have no interest in, or right to participate with respect to the determination of, any compensation for any Taking, except only that Tenant shall be entitled to the portion of any award specifically designated by the condemning authority to be for any personal property of Tenant included in any such Taking or for any relocation expenses or business interruption loss incurred by Tenant.

13. DEFAULT.

13.1 The following events shall be deemed to be events of default by Tenant under this Lease:

(a) If Tenant shall fail to pay any installment of rent or any other sum required to be paid by Tenant under this Lease as due.

(b) If Tenant shall fail to comply with any term, provision or covenant of this Lease, other than provisions pertaining to the payment of money.

(c) If Tenant shall make an assignment for the benefit of creditors.

(d) If Tenant shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof pertaining to bankruptcy, insolvency or debtor relief, or Tenant shall have a petition or other proceedings filed against Tenant under any such law or chapter thereof and such petition or proceeding shall not be vacated or set aside within sixty (60) days after such filing.

(e) If a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant and such receivership shall not be terminated and possession of such assets restored to Tenant within thirty (30) days after such appointment.

(f) If Tenant shall desert or vacate any substantial portion of the Premises and the same shall remain unoccupied for more than fourteen (14) days thereafter.

(g) If Tenant shall assign this Lease or sublet the Premises in violation of the terms hereof.

13.2 Any shorter period for cure provided by law notwithstanding, and in lieu thereof, including without limitation California Code of Civil Procedure Section 1161, Tenant may cure any monetary default under Subsection 13.1(a), above, at any time within five (5) days after written notice of default is received by Tenant from Landlord; and (except as specifically provided otherwise in Section 24) Tenant may cure any non-monetary default within fifteen (15)

days after written notice of default is received by Tenant from Landlord, provided that if such non-monetary default is curable but is of such a nature that the cure cannot be completed within fifteen (15) days, Tenant shall be allowed to cure the default if Tenant promptly commences the cure upon receipt of the notice and diligently prosecutes the same to completion, which completion shall occur not later than sixty (60) days from the date of such notice from Landlord.

14. REMEDIES UPON DEFAULT.

14.1 Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies (each and all of which shall be cumulative and non-exclusive) without any notice or demand whatsoever:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(1) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

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

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to attorneys' fees, removal and storage (or disposal) of Tenant's personal property, un-reimbursed leasehold improvement costs (e.g., the amounts Landlord has expended for leasehold improvements which have not been recovered as of the termination of the Lease when amortized on a straight-line basis over the originally scheduled lease term), brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(5) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Subsection 14.1(a) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. Any such sums which are based on percentages of income, increased costs or other historical data shall be reasonable estimates or projections computed by Landlord on the basis of the amounts thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such sums before a 24-month period has expired, then the computation shall be made on the basis of the amounts accruing during such shorter period. As used in Subsections 14.1(a)(1) and (2), above, the "worth at the time of award" shall be computed by allowing interest from the date the sums became due at the lesser of (i) the Bank of America prime rate on the due date plus six percent (6%), or (ii) the maximum rate permitted by law. As used in Subsection 14.1(a)(3), above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to any procedures permitted by applicable law, including but not limited to those described in Section 15.3. No re-entry or taking possession of the Premises by Landlord pursuant to this Subsection 14.1(b), and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(c) In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the right to continue this Lease in full force and effect, whether or not Tenant shall have abandoned the Premises. The foregoing remedy shall also be available to Landlord pursuant to California Civil Code Section 1951.4 and any successor statute in the event Tenant has abandoned the Premises. In the event Landlord elects to continue this Lease in full force and effect pursuant to this Subsection 14.1(c), then Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due. Landlord's election not to terminate this Lease pursuant to this Subsection 14.1(c) or pursuant to any other provision of this Lease, at law or in equity, shall not preclude Landlord from subsequently electing to terminate this Lease or pursuing any of its other remedies.

(d) Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. If Landlord so elects to succeed to Tenant's interest, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

14.2 Following the occurrence of an event of default by Tenant, Landlord shall have the right to require that any or all subsequent amounts paid by Tenant to Landlord hereunder, whether in cure of the default in question or otherwise, be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to Landlord, or by other means approved by Landlord, notwithstanding any prior practice of accepting payments in any different form.

14.3 All rights, options and remedies of Landlord contained in this Section 14 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or more of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Section 14 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

14.4 Landlord shall not be deemed in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such 30-day period and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord, Tenant shall be entitled, as Tenant's sole and exclusive remedy, to recover from Landlord Tenant's actual damages (but not lost profits or any punitive, incidental or consequential damages unless resulting from Landlord's intentional misconduct but subject in all cases to the provisions of Section 33.17 below) shown by Tenant to have been directly caused thereby; provided, however: (a) Tenant shall have no right to offset or abate rent in the event of any default by Landlord under this Lease, except to the extent offset rights are specifically provided to Tenant in this Lease; (b) Tenant shall not be entitled to terminate this Lease by reason of Landlord's default unless such default prevents Tenant from substantially using the Premises as contemplated herein; and (c) Tenant's rights and remedies hereunder shall be subject to any specific limitations set forth in other provisions of this Lease.

14.5 No waiver by Landlord or Tenant of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach of the same or any other of the terms, provisions, and covenants herein contained. Forbearance by Landlord in enforcement of one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The acceptance of any rent hereunder by Landlord following the occurrence of any default, whether or not known to Landlord, shall not be deemed a waiver of any such default, except only a default in the payment of the rent so accepted, subject to the provisions of Section 33.1.

15. SURRENDER OF PREMISES; REMOVAL OF PROPERTY.

15.1 No act or thing done by Landlord or any agent or employee of Landlord during the term hereof shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of

such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

15.2 Upon the expiration of the term of this Lease, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Section 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

15.3 Whenever Landlord shall re-enter the Premises as provided in this Lease, any personal property of Tenant not removed by Tenant upon the expiration of the term of this Lease, or within forty eight (48) hours after a termination by reason of Tenant's default as provided in this Lease, shall be deemed abandoned by Tenant and may be disposed of by Landlord (without liability to Tenant) in accordance with Sections 1980 through 1991 of the California Civil Code and Section 1174 of the California Code of Civil Procedure, or in accordance with any laws or judicial decisions which may supplement or supplant those provisions from time to time, or in accordance with any other legally permissible procedure, whether by public or private sale or otherwise. Landlord shall be entitled to apply any proceeds of the sale of such items to any sums due to Landlord by Tenant and to Landlord's costs of removal, storage and sale of such items. Alternatively, Landlord shall be entitled to treat Tenant's failure to remove such items from the Premises as either a permitted or unpermitted holdover pursuant to Section 19 of this Lease.

15.4 All fixtures, alterations, additions, repairs, improvements and/or appurtenances attached to or built into or on or about the Premises prior to or during the term hereof, whether by Landlord at its expense or at the expense of Tenant, or by Tenant at its expense, or by previous occupants of the Premises, shall be and remain part of the Premises and shall not be removed by Tenant at the end of the term of this Lease. Such fixtures, alterations, additions, repairs, improvements and/or appurtenances shall include, without limitation, built-in utilities such as heating, ventilating and air conditioning units, floor coverings, drapes, paneling, molding, doors, kitchen and dishwashing fixtures and equipment, plumbing systems, electrical systems, lighting systems, silencing equipment, all fixtures and outlets for the systems mentioned above and for all telephone, radio, telegraph and television purposes, and any special flooring or ceiling installations, as well as standby power generators, fuel tanks (subject to the following paragraph) and electrical fuel gear, and condenser units (if any) installed pursuant to the terms of the Lease, wherever located in the Building (including its roof) (but excluding Tenant's telecommunications switch and other telecommunications trade fixtures and equipment, and batteries and rectifiers, which Tenant agrees to remove upon the expiration or termination of this Lease). Notwithstanding the foregoing, Landlord may, in its sole discretion, require Tenant, at Tenant's sole cost and expense, to remove any fixtures, alterations, additions, repairs, improvements and/or appurtenances attached or built into or on or about the Premises or as otherwise listed above (specifically including telecommunications equipment, but excluding conduit and cable and initial tenant improvements). Tenant shall repair any damage to the Building and Premises occasioned by the installation, construction, operation and/or removal of any fixtures, trade fixtures, equipment, alterations, additions, repairs, improvements and/or appurtenances pursuant to this section. If Tenant shall fail to complete such removal and repair such damage, Landlord may do so and may charge the reasonable cost thereof to Tenant.

15.5 Tenant hereby waives all claims for damages or other liability in connection with Landlord's re-entering and taking possession of the Premises or removing, retaining, storing or selling the property of Tenant as herein provided, and Tenant hereby indemnifies and holds Landlord harmless from any such damages or other liability, and no such re-entry shall be considered or construed to be a forcible entry.

16. COSTS OF SUIT; ATTORNEYS' FEES; WAIVER OF JURY TRIAL.

16.1 If Tenant or Landlord shall bring any action for any relief, declaratory or otherwise, against the other arising out of or under this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party its costs of suit, including, without limitation, a reasonable sum for attorneys' and other professional fees relating to such suit, and such fees shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is contested or prosecuted to judgment.

16.2 In the event that Landlord shall, without fault on Landlord's part, be made party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or material furnished to or for Tenant or of any such other person, Tenant hereby indemnifies and holds Landlord harmless from and against all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in or in connection with such litigation.

16.3 In order to limit the cost of resolving any disputes between the parties, and as a material inducement to each party to enter into this Lease, each party hereby waives the right to a jury trial with respect to any litigation between the parties arising out of this Lease, Tenant's occupancy of the Premises, or Landlord's ownership, operation or management of the Building, irrespective of any rights to a jury trial which either party otherwise then would have under applicable statutes, constitutions, judicial decisions or other laws.

17. ASSIGNMENT AND SUBLETTING.

17.1 Except as hereinafter provided, Tenant shall not sublet all or any part of the Premises, nor assign this Lease, nor enter any license, "co-location agreement" (except as provided in Section 17.2 below) or other agreement permitting a third party (other than Tenant's employees and occasional guests) to use or occupy any portion of the Premises, without Landlord's express prior written consent, which consent shall not unreasonably be withheld. (For purposes of the balance of this Section 17.1 and Sections 17.2 through 17.5, the term "sublease" shall be deemed to include licenses, co-location agreements (which shall be governed by Section 17.2 below), and other agreements for use or occupancy of the Premises as described in the preceding sentence. The terms "subtenant" and "sublet" shall be construed accordingly.)

In order to assist Landlord in evaluating any proposed assignment or sublease, Tenant agrees to provide Landlord with the proposed subtenant or assignee's current financial statement and financial statements for the preceding two (2) years and such other information concerning the business background and financial condition of the proposed subtenant or assignee and of Tenant as Landlord may reasonably request.

Landlord and Tenant hereby agree that Landlord's disapproval of any proposed sublease or assignment hereunder shall be deemed reasonable if based upon any reasonable factor, including, without limitation, any or all of the following factors:

(a) The proposed transfer would result in more than two subleases of portions of the Premises being in effect at any time during the term;

(b) The rent payable by the proposed transferee would be less than the fair market rental value for the space as determined pursuant to the last paragraph of this Section 17.1 (except as otherwise provided in Section 17.2);

(c) The proposed transferee is an existing tenant or occupant of the Building or has negotiated with Landlord within the last twelve months for space in the Building or is another transferee prohibited by the next to last paragraph of this Section 17.1;

(d) The proposed transferee is a governmental entity;

(e) The transaction calls for new demising walls to be built, and the portion of the Premises proposed to be sublet or assigned is irregular in shape and/or has inadequate means of ingress and egress;

(f) The use of the Premises by the proposed transferee (i) is not permitted by the use provisions of this Lease, or (ii) might, in Landlord's reasonable opinion, violate any right for an exclusive use granted by Landlord to another Tenant in the Building;

(g) The transfer would likely result, in Landlord's reasonable opinion, in a significant increase in the use of the parking areas or common areas of the Building due to the transferee's employees or visitors, and/or significant increase in the demand for utilities and services to be provided by Landlord to the Premises;

(h) The assignee or subtenant does not, in Landlord's reasonable opinion, have the financial capability to fulfill the obligations imposed by the transfer, or in the case of an assignment, the assignee does not, in Landlord's reasonable opinion, have income and net worth at least equal to that of Tenant;

(i) The transferee is not, in the Landlord's reasonable opinion, of reputable or good character or consistent with Landlord's desired tenant mix;

(j) The transferee is a real estate developer or landlord or is acting directly or indirectly on behalf of a real estate developer or landlord;

(k) The proposed transferee may, in Landlord's reasonable opinion, increase the chances of significant hazardous waste contamination within the Premises or the Building; or

(l) In the reasonable judgment of the Landlord, the purpose for which the transferee intends to use the Premises is not in keeping with the standards of the Landlord for the Building or is in violation of the terms of any other lease in the Building.

Notwithstanding the foregoing, Tenant may, subject to the rest of the terms hereof, sublet all of the Premises or assign this Lease to any entity controlling, controlled by or under common control with Tenant, (including assignment or subletting to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern) provided that, with regard to each such assignment or subletting: (A) Landlord receives the financial statements prescribed above and such other financial and background information as Landlord may request regarding the assignee or subtenant at least twenty (20) days prior to such proposed assignment or sublease; (B) the Landlord determines, in its reasonable discretion, that the income and net worth of the assignee or subtenant comply with the standards prescribed in item (h) above; (C) the use of the Premises is not altered; (D) the Landlord determines, in its sole and absolute discretion, that the transaction is not being entered into as a subterfuge to avoid the restrictions on assignment and subletting in the Lease; and (E) the subtenant or assignee expressly assumes the obligations of Tenant hereunder as prescribed below in this Section 17.1 .

Neither this Lease nor the term hereby demised shall be mortgaged by Tenant, nor shall Tenant mortgage, assign, pledge or otherwise transfer the interest of Tenant in and to any sublease or the rentals payable thereunder or in the Security Deposit.

Any sublease, assignment, mortgage, pledge, encumbrance, or transfer made in violation of this Section 17.1 shall be void and at Landlord's election shall terminate this Lease.

Each subtenant, assignee or transferee of Tenant, other than Landlord, shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent, and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease (provided that in the case of a sublease, the subtenant's obligations shall be limited to those obligations relating to the subleased space and the common areas during the sublease term). No sublease or assignment shall be deemed approved by Landlord unless such subtenant or assignee and Tenant shall deliver to Landlord a counterpart of such sublease or assignment and an instrument in a form acceptable to Landlord, which contains a covenant of assumption by the subtenant or assignee satisfactory in substance and form to Landlord, consistent with the requirements of this Section 17.1, but the failure or refusal of the subtenant or assignee to execute such instrument of assumption shall not release or discharge the subtenant or assignee from its liability as set forth above.

No subtenant or assignee not complying with the foregoing requirements shall have any interest in the Security Deposit. Any assignee that does comply with the foregoing requirements shall automatically succeed to Tenant's position with respect to the Security Deposit, and Landlord shall have the right to refund all or any portion of the Security Deposit to the assignee at any time or under any circumstances with no liability to the assignor.

Landlord may require that the assignee or subtenant remit directly to Landlord on a monthly basis, all monies due to Tenant by said assignee or subtenant. In such event Landlord shall apply the sums received to the obligations of Tenant and its successors under this Lease.

In the event of default by any assignee or subtenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor.

Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with the assignee or other successor of Tenant, and without obtaining Tenant's consent thereto, and any such actions shall not relieve Tenant of liability under this Lease.

Consent by Landlord to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

If Tenant is a corporation which, under California law, is not deemed a publicly-held corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest controlling such corporation, association or partnership shall be deemed an assignment within the meaning and provisions of this Section 17. For purposes hereof, "control" shall be deemed to refer to any amount, in the aggregate, exceeding twenty five percent (25%) of the voting power of such corporation, association or partnership. Notwithstanding the foregoing, the immediately preceding sentence shall not apply to any transfer of stock of Tenant if Tenant is a publicly-held corporation and such stock is transferred publicly over a recognized security exchange or over-the-counter market.

Subject to Section 17.2, Tenant agrees that all advertising by Tenant to market the space in the Premises to be sublet or assigned shall require Landlord's prior written approval, which shall not be unreasonably withheld. Subject to Section 17.2, Tenant further agrees that it shall not, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole discretion, market any space in the Premises, assign the lease or sublet any space in the Premises to existing tenants or occupants of the Building, or to any entity controlling, controlled by, or under common control with any existing tenant or occupant of the Building, except for any entity controlling, controlled by or under common control with Tenant.

Subject to Section 17.2, Tenant agrees that it shall not sublet, nor assign, nor advertise as available for subletting or assignment, nor list with brokers for subletting or assignment, all or any portion of the Premises for a consideration which is equal to less than the fair market rental value, as determined by Landlord in its reasonable discretion, for comparable space in the Building for a comparable term commencing concurrently with the assignment or sublease term, with comparable rent credits and tenant improvement allowances. Within ten (10) days after Landlord receives any written request from Tenant for Landlord's estimate of the fair market rental value for specified space (which request shall identify the space in question, the proposed term and the proposed rent credits and improvement allowances), Landlord shall notify Tenant in writing of the fair market rental value for such space for a comparable term with comparable rent credits and tenant improvement allowances.

17.2 Landlord acknowledges that Tenant's business to be conducted on the Premises requires the installation on the Premises of certain communications equipment by telecommunications customers of Tenant (collectively "Customers") in order for such Customers to interconnect with Tenant's terminal facilities. Tenant represents to Landlord that such arrangements will require access by each Customer to the Premises only on an infrequent basis, and only when accompanied by a representative of Tenant. Notwithstanding anything contained elsewhere in this Section 17, Landlord hereby consents in advance to any sublease, license agreement, "co-location agreement" or like agreement (collectively, "Customer Subleases") between Tenant and such a Customer for the limited purpose of permitting such an arrangement as is described in this Section 17.2. The effectiveness of such advance consent as to a particular Customer Sublease is conditioned on (a) such Customer and Tenant signing and submitting to Landlord within ten (10) business days after entering into such a transaction a Notice and Agreement in the form attached hereto as Exhibit F; and (b) such Customer Sublease being in writing and consistent with the provisions of this Lease (although Tenant will only be obligated to provide Landlord with a copy of the executed Customer Sublease if Landlord requests it in writing in which case Tenant will provide Landlord with a true and complete copy within ten (10) days after Tenant receives Landlord's request). Provided that Tenant's Customer Subleases comply with items (a), (b) and (c) above, they need not comply with those requirements of Section 17.1 above regarding financial statements, advertising and minimum rental rates. Tenant shall be liable to Landlord for any violation by its Customers of any provisions of this Lease. If during the Lease term Tenant and Landlord are required to permit co-location in the Premises pursuant to applicable statutes, rules or regulations, Section 33.2 shall nonetheless apply.

17.3 In the event that Tenant desires to assign this Lease, or to enter into a sublease, as to all or any portion of the Premises, except (a) where the subtenant or assignee is an entity controlling, controlled by or under common control with Tenant, or (b) as permitted under Section 17.2 herein, Tenant shall, prior to solicitation of offers therefor, give

Landlord notice of Tenant's desire to assign or sublet and of the portion of the Premises to be affected by the proposed assignment or sublease. Landlord shall have the right, exercisable by notice to Tenant within sixty (60) days after Landlord's receipt of Tenant's notice of desire to assign or sublet, to terminate this Lease as to the portion of the Premises affected by the proposed assignment or sublease, such termination to be effective as of the date sixty (60) days after notice by Landlord to Tenant of such termination.

In the event of a termination of this Lease as to a portion of the Premises pursuant to this Section 17.3, effective as of such termination, the Premises shall be deemed to no longer include the portion of the Premises subject to such termination, Tenant shall surrender possession of that portion of the Premises in accordance with the provisions of this Lease, and the rent payable hereunder and Tenant's Percentage Share shall be appropriately adjusted based upon the rentable area remaining within the Premises.

If Landlord does not elect to terminate pursuant to this Section 17.3, and if Tenant does not enter into an assignment or sublease as specified in Tenant's notice of desire to assign or sublet within six (6) months after the expiration of Landlord's 60-day period for election to terminate, then Tenant shall again comply with the provisions of this Section 17.3 before assigning this Lease, or entering into a sublease, as to all or any portion of the Premises.

17.4 In the event that Tenant has sought and received Landlord's consent to assign this Lease, or to enter into a sublease as to all or any portion of the Premises, the monthly rent payable by Tenant to Landlord, pursuant to Section 3, shall be increased by fifty percent (50%) of the amount to be received by Tenant during each month pursuant to the terms of the assignment or sublease, in excess of Tenant's monthly rental payable to Landlord for the space subject to the assignment or sublease. The amounts referred to in the previous sentence include rent, additional rent, or any other payment in respect of use or occupancy, or in reimbursement of costs of leasehold improvements installed by Tenant, and whether paid in a lump sum or periodic payments; provided however, such amounts shall not include any fees charged by Tenant to its Customers to the extent such fees are based on Tenant's services (not square footage or space used by the Customers) as provided under Section 17.2 herein. In no event shall the total sums payable to the Landlord be less than the monthly rental Landlord would have received but for such assignment or sublease.

The additional rent shall be due and payable to Landlord in accordance with the schedule specified in the sublease or assignment instrument, and the failure of any subtenant or assignee to make any payments in accordance with that schedule shall not affect the obligation of Tenant to pay the additional rent to Landlord.

The calculation of the amount of rentable space being sublet shall be made by Landlord in accordance with its usual standards. Landlord may require acknowledgement by Tenant of Tenant's concurrence on the Landlord's calculation of the amount of rentable space being sublet as a condition to Landlord's consent to any sublease.

The provisions of a sublease or assignment instrument consented to by Landlord cannot be modified, nor the sublease or assignment terminated, other than in accordance with its terms, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. The terms of this Section 17.4 shall apply to any subleasing or assignment by any subtenant or assignee.

17.5 Tenant shall pay to Landlord, promptly upon receipt of a billing from Landlord, the amount of Landlord's reasonable attorney fees incurred in connection with Landlord's review or approval of any sublease or assignment transaction requiring Landlord's consent hereunder.

18. TRANSFER OF LANDLORD'S INTEREST. In the event of any transfer of Landlord's interest in the Building or Premises, other than a transfer for security purposes only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer, including, without limitation, the obligation of Landlord to return the Security Deposit as provided in this Lease; provided that the transferor shall, within a reasonable time, transfer any Security Deposit then held by Landlord, or any portion thereof remaining after proper deductions therefrom, to the transferee and shall thereafter notify Tenant of such transfer, of any claims made against the Security Deposit, and of the transferee's name and address, by written notice delivered personally (in which case Tenant shall acknowledge receipt of such notice by signing Landlord's copy of such notice) or by registered or certified mail.

19. HOLDING OVER. If Tenant holds over after the term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case, Base Rent shall be payable at a monthly rate equal to: (a) one hundred fifty percent (150%) of the Base Rent applicable to the Premises immediately prior to the date of such expiration or earlier

termination. Such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein. Nothing contained in this Section 19 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease.

20. NOTICES. In every case when, under the provisions of this Lease, it shall be necessary or desirable for one party hereto to serve any notice, request or demand on the other, such notice or demand shall be in writing and shall be served personally or by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed to the applicable address for notice set forth in Section A on page 1. Landlord or Tenant may, from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to whom all such notices or demands are thereafter to be addressed. Service of any such notice or demand if given personally shall be deemed complete upon delivery, and if made by mail shall be deemed complete on the day of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of two (2) business days after the date of mailing, whichever is earlier.

Notwithstanding the provisions of this Section 20, any notice of default as described in Section 13.2 and any pleadings or notices given by either party to the other with respect to any judicial proceeding between the parties shall be served in the manner prescribed by applicable California law without reference to this paragraph, and shall be deemed served at such time as is provided by such applicable law without reference to this paragraph.

21. QUIET ENJOYMENT. Landlord covenants that Tenant, upon paying the rent and performing the covenants of this Lease on Tenant's part to be performed, shall and may peaceably and quietly have, hold and enjoy the Premises for the term of this Lease.

22. TENANT'S FURTHER OBLIGATIONS.

22.1 Except for ordinary wear and as otherwise provided in this Lease, Tenant shall, at Tenant's expense, keep in good order, condition and repair the interior of the Premises and shall promptly and adequately repair all damage to the interior of the Premises and replace or repair all glass, fixtures, equipment and appurtenances therein damaged or broken, under the supervision and with the approval of Landlord and, if Tenant does not do so, Landlord may, but need not, make such repairs and replacements. If Landlord does so, Tenant shall pay Landlord the cost thereof promptly upon demand, as additional rent hereunder.

22.2 Tenant shall comply with all laws, ordinances, rules, regulations, orders and directives of governmental and quasi-governmental bodies and authorities having jurisdiction over Tenant or the Premises from time to time and shall obtain and keep in effect all licenses, permits (including but not limited to conditional use permits) and other authorizations required with respect to the business or businesses conducted by Tenant within or from the Premises or with respect to any special equipment or facilities of Tenant permitted under the other provisions of this Lease. Tenant and its employees, agents, licensees and invitees shall also comply with all reasonable rules and regulations which Landlord may adopt from time to time for the protection and welfare of the Building and its tenants and occupants; provided that Tenant shall not be responsible for compliance with any rule or regulation adopted by Landlord unless or until Tenant is furnished with a copy thereof. The present rules and regulations for the Building are attached hereto as Exhibit "B". Landlord shall have no liability to Tenant for the failure of any other tenant in the Building to observe the rules and regulations.

23. ESTOPPEL CERTIFICATE BY TENANT. At any time and from time to time, within ten (10) days after written request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a statement (substantially in the form of Exhibit D attached hereto) in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), that Tenant knows of no default hereunder by Landlord and has no right of offset or deduction against the rent or any other charge payable to Landlord (or specifying any claimed), the amount of any security posted by Tenant, the dates to which the rent and other charges have been paid in advance, any increases or decreases of rent that are anticipated, the commencement date of the Lease and such other matters as may be reasonably requested by Landlord. It is intended that any statement delivered pursuant to this Section 23 may be relied upon by any purchaser of the fee or mortgagee or beneficiary or assignee of any mortgage or trust deed upon the fee of the Building or Premises. Tenant's failure to deliver the statement within the period specified above shall be conclusive and binding upon Tenant that the Lease is in full force and effect without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against rental, and that no more than one month's rental has been paid in advance.

24. SUBORDINATION AND ATTORNMENT. This Lease is and at all times shall be subject and subordinate to any ground or underlying leases, mortgages, trust deeds or like encumbrances, which may now or hereafter affect the Building or Premises, and to all renewals, modifications, consolidations, replacements and extensions of any such lease, mortgage, trust deed or like encumbrance. As a condition precedent to the effectiveness of any such subordination of this Lease to any future ground or underlying leases or the lien of any future mortgages, deeds of trust, or like encumbrances, Landlord shall request that any existing or future mortgagees or ground lessors provide to Tenant a commercially reasonable non-disturbance and attornment agreement in favor of Tenant (substantially in the form of Exhibit E attached hereto) executed by such future ground lessor, master lessor, mortgagee or deed of trust beneficiary, as the case may be, which shall provide that Tenant's quiet possession of the Premises shall not be disturbed on account of such subordination to such future lease or lien so long as Tenant is not in default under any provisions of this Lease. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any or all ground or underlying leases or the lien of any or all mortgages, deeds of trust or like encumbrances to the Lease. In the event that any ground or underlying lease terminates for any reason or any mortgage, deed of trust or like encumbrance is foreclosed or a conveyance in lieu of foreclosure is made for any reason, then at the election of Landlord's successor-in-interest, Tenant shall attorn to and become the tenant of such successor. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver to Landlord in the form reasonably required by Landlord, within ten (10) days after receipt of written demand by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to any ground or underlying lease or the lien of any mortgage, deed of trust, or like encumbrance. Should Tenant fail to sign and return any such documents within said 10-day period, Tenant shall be in default hereunder without the benefit of any additional notice or cure periods, except as may be required by statute.

25. RIGHTS RESERVED TO LANDLORD.

25.1 All portions of the Building are reserved to Landlord, including exterior building walls, core corridor walls and doors and any core corridor entrance, but excluding the Premises and the inside surfaces of all walls, windows and doors bounding the Premises. Landlord also reserves any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other building facilities, and the use thereof, as well as the right to access thereto through the Premises for the purposes of operation, maintenance, decoration and repair.

25.2 Landlord shall have the following rights exercisable upon reasonable advance notice (or without notice in the event of an emergency) and without liability to Tenant for damage or injury to property, person or business (all claims for damage being hereby released), and without effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for setoffs or abatement of rent:

(a) To enter the Premises at all reasonable times during the term of this Lease for the purpose of inspecting the same, posting notices of non-responsibility, exhibiting the Premises to prospective tenants, purchasers or others, or making such repairs or replacements therein as may be required by this Lease or as Landlord may deem appropriate; provided that Landlord shall use all reasonable efforts not to disturb Tenant's use and occupancy and shall, when practical, give Tenant prior notice of such repairs. For each of the foregoing purposes, Tenant shall provide to Landlord a key with which to unlock at any time all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes. Landlord may use any other means which Landlord may deem proper to open such doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, or grounds for any abatement or reduction of rent. Any damages or losses on account of any such entry by Landlord shall be Tenant's sole responsibility except as otherwise expressly provided herein. Nothing in this Section 25 shall be construed as obligating Landlord to perform any repairs, alterations or decorations, except as otherwise expressly required in this Lease.

(b) To change the name or street address of the Premises or Building.

(c) To install and maintain signs on the exterior and interior of the Building, except within the Premises.

(d) To have pass keys to the Premises.

(e) To decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy during the last 6 months of the term hereof if, during or prior to such time, Tenant has vacated the Premises, or at any time after Tenant abandons the Premises.

(f) To have access to all mail chutes according to the rules of the United States Postal Service.

(g) To do or permit to be done any work in or about the exterior of the Building or any adjacent or nearby building, land, street or alley.

(h) To grant to anyone the exclusive right to conduct any business or render any service in the Building, provided such exclusive right shall not operate to exclude Tenant from the use expressly permitted by this Lease.

26. FORCE MAJEURE. Whenever there is provided in this Lease a time limitation for performance by Landlord or Tenant of any construction, repair, maintenance or service, the time provided for shall be extended for as long as and to the extent that delay in compliance with such limitation is due to an act of God, governmental control or other factors beyond the reasonable control of Landlord or Tenant, respectively.

27. WAIVER OF CLAIMS; INDEMNITY.

27.1 Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of, and waives all claims it may have against Landlord, its agents, employees, partners, officers, directors, affiliates and successors in interest (collectively, the "Landlord Group") for damage to or loss of property or personal injury or loss of life resulting from the Building or Premises or any part thereof becoming out of repair, by reason of any repair or alteration thereof, or resulting from any accident within the Building or Premises or on or about any space adjoining the Building or Premises, or resulting directly or indirectly from any act or omission of any person, or due to any condition, design or defect of the Building or Premises, or any space adjoining the Building or Premises, or the mechanical systems of the Building or Premises, which may exist or occur, whether such damage, loss or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, and regardless of whether the cause of such damage, loss or injury or the means of repairing the same is accessible to Tenant; provided such assumption and waiver shall not apply to claims caused by the gross negligence or willful misconduct of Landlord or its agents.

27.2 Tenant hereby agrees to indemnify, defend, and hold Landlord and the Landlord Group harmless from and against (a) any and all claims, demands, suits, fines, losses, expenses and liabilities (collectively, "Claims") for or relating to injury or loss of life to persons or damage to or loss of property arising from Tenant's use of the Building or the Premises, or from the conduct of Tenant's business, or from any work done, permitted or suffered by Tenant in or about the Premises or elsewhere, or from any negligence or intentional conduct of Tenant or Tenant's agents, employees, contractors, licensees, invitees, representatives or successors in interest; (b) any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; and (c) all costs, attorneys' and other professional fees, expenses and liabilities incurred by Landlord or any member of the Landlord Group in or in connection with any such Claim. In the event that any action or proceeding is brought against Landlord or any member of the Landlord Group by reason of any such Claim, Tenant upon notice from Landlord shall defend such action or proceeding at Tenant's cost and expense by counsel approved by Landlord, such approval not to be unreasonably withheld. Tenant's obligations under this Section 27.2 shall survive the expiration or termination of this Lease as to any matters arising prior to such expiration or termination or prior to Tenant's vacation of the Building. Under no circumstances shall Landlord ever be liable to Tenant for consequential or punitive damages, including damages for lost profits or for business interruption. Neither the directors, officers, shareholders and employees of Landlord shall be personally liable for any claim or judgment against Landlord under any circumstances. If Landlord is in default under this Lease, then Tenant shall seek only a money judgment or an action for specific performance and/or declaratory relief against Landlord and shall not attempt to seize or attach any asset of Landlord other than Landlord's right to insurance proceeds except as otherwise provided herein. If Tenant recovers a money judgment or an action for specific performance and/or declaratory relief against Landlord, then such judgment shall be satisfied only out of the proceeds of the sale received on execution of the judgment levied against the right, title and interest of the Landlord in the Office Building or out of rent or other income of the Office Building received or to be received by the Landlord or by insurance proceeds which the Landlord receives or is entitled to receive. Tenant shall not attempt to satisfy any such judgment from any other asset of Landlord under any circumstances. Tenant acknowledges that this limitation on Landlord's liability has been separately bargained for and that Landlord would not enter into this Lease in the absence of this provision.

28. INSURANCE.

28.1 Tenant shall procure and shall maintain in effect, at Tenant's sole cost and expense throughout the term of this Lease, including any extensions and renewals thereof, public liability and property damage insurance against claims for bodily injury, death or property damage occurring upon or about the Premises or Building, in each case naming Landlord and its managing agents as additional insureds and, upon request by Landlord, naming the holder of any mortgage, deed of trust or like encumbrance or the lessor under any underlying lease covering the Building as additional insured, with a limit of liability of not less than $3,000,000.00 single limit. If from time to time, the limits of liability set forth above are, in the reasonable opinion of Landlord, inadequate, Tenant shall increase such insurance coverage to an amount as shall be designated by Landlord's notice to Tenant.

Tenant shall also procure and maintain, at Tenant's sole cost and expense throughout the term of this Lease, casualty insurance on Tenant's personal property in the Premises and any leasehold improvements which the Tenant installed at its own cost in an amount at least equal to the full replacement cost of such property, providing coverage against all perils insured against by a "fire and extended coverage" policy, as well as sprinkler damage, vandalism and malicious mischief.

Tenant shall also obtain the following insurance:

(a) Worker's compensation and employer's liability insurance in form and amount satisfactory to Landlord.

(b) Loss of income and extra expense insurance and business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to or use of the Premises or the Building as a result of such perils.

(c) Liquor liability insurance coverage in limits of not less than Five Hundred Thousand Dollars ($500,000) if at any time during the term hereof any alcoholic beverages of any nature are served on the Premises.

(d) Any other form or forms of insurance as Landlord or Landlord's lender or ground or primary lessors may reasonably require from time to time in form, in amounts, and for insurance risks against which a prudent tenant of a comparable size and in a comparable business would protect itself.

Such policies of insurance shall be with insurance companies acceptable to Landlord, shall not have a deductible amount exceeding $5,000.00 in the aggregate, and shall specifically provide that the insurance afforded by such policies for the benefit of Landlord and its managing agents and Landlord's mortgagees and ground lessors shall be primary, and that any insurance carried by Landlord or Landlord's mortgagees and ground lessors shall be excess and non-contributing. Such policies shall be evidenced by certificates of insurance delivered to Landlord from time to time showing such insurance to be at all times prepaid and in full force and effect and providing that such insurance cannot be canceled or modified upon less than thirty (30) days' prior written notice to Landlord, and such other evidence of coverage requested by Landlord. (Such evidence may consist of copies of such policies, including additional insured endorsements.) If at any time Tenant has not provided Landlord with a then currently effective certificate of insurance or other evidence of coverage acceptable to Landlord as to any insurance required to be maintained by Tenant, Landlord may, without further inquiry as to whether such insurance is actually in force, obtain such a policy and Tenant shall reimburse Landlord, upon demand as additional rent hereunder, for the cost thereof, together with Landlord's administrative fee equal to twenty five percent (25%) of the premium.

28.2 Tenant hereby waives its rights against Landlord and its managing agent and their respective partners, officers, directors, shareholders, employees, agents, representatives, contractors, affiliates, successors, licensees, and invitees with respect to any claims or damages or losses (including any claims for bodily injury to persons and/or damage to property) which are caused by or result from (a) risks insured against under any insurance policy carried by Tenant at the time of such claim, damage, loss or injury, or (b) risks which would have been covered under any insurance required to be obtained and maintained by Tenant under this Lease had such insurance been obtained and maintained as required. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

28.3 Landlord and Tenant each shall cause each insurance policy required to be obtained by them pursuant to this Lease to provide that the insurer waives all rights of recovery by way of subrogation against the other and their

respective managing agents, partners, officers, directors, shareholders, employees, agents, representatives, contractors, affiliates, successors, licensees, and invitees in connection with any claims, losses and damages covered by such policy. If Tenant fails to maintain insurance required hereunder, Tenant shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

29. FIXTURES, TENANT IMPROVEMENTS AND ALTERATIONS.

29.1 Except as otherwise provided in this Lease, all improvements, fixtures and/or equipment which Tenant may install or place in or about the Premises, and all alterations, repairs or changes to the Premises, and all signs installed in, on or about the Premises, from time to time, shall be at the sole cost of Tenant. Landlord shall be without any obligation in connection therewith. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such alterations, repairs, changes, improvements, fixtures, and/or equipment in, on or about the Premises. Tenant's obligations under the preceding sentence shall survive the expiration or termination of this Lease as to any matters arising prior to such expiration or termination or prior to Tenant's vacation of the Building.

29.2 Notwithstanding any provision in this Section 29 to the contrary, Tenant is absolutely prohibited from making any alterations, additions, improvements or decorations which: (i) affect any area outside the Premises; (ii) affect the Building's structure, equipment, services or systems, or the proper functioning thereof, or Landlord's access thereto; (iii) affect the outside appearance, character or use of the Building or the common areas; (iv) weaken or impair the structural strength of the Building; (v) in the opinion of Landlord, lessen the value of the Building; (vi) will violate or require a change in any occupancy certificate applicable to the Premises; or (vii) in the opinion of Landlord, will increase the Building's Operating Costs or Utility Costs.

29.3 Before proceeding with any alteration, repair or change which is not otherwise prohibited in Subsection 29.2 above, Tenant must first obtain Landlord's written approval of (i) the plans and specifications for all such work; (ii) with respect to any connecting lines that will be outside the Premises (if such lines are permitted by Landlord in its sole discretion), a description of the areas of the Building to which Tenant will require access both for the initial work and for ongoing maintenance of the improvements or installations; (iii) the names of all contractors and subcontractors who will perform such work, all of whom shall be selected from Landlord's then-current list of approved contractors, which Landlord may compile in Landlord's sole discretion and will provide to Tenant within ten days following Landlord's receipt of Tenant's written request; (iv) copies of all construction contracts entered by Tenant with any contractor for the work; (v) copies of all liability, casualty, worker's compensation and builder's risk insurance applicable to the construction, maintenance and ongoing operation of the improvements and installations; and (vi) copies of all governmental permits required for the work. Landlord's consent to such matters shall not unreasonably be withheld; provided, however, that with regard to any such matters which may affect the structural members, the heating, ventilation, air conditioning or other building systems, exterior walls, windows and doors of the Building, and with regard to the installation of any signs outside the Premises, Landlord may grant or withhold its consent in its unlimited discretion. Landlord may impose, as a condition of its consent to any alterations, repairs or changes of the Premises, such requirements as Landlord in its sole discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors, materials, mechanics and materialmen previously used and currently approved by Landlord for work in the Building.

29.4 After Landlord has approved the change, repair or alteration and the other items listed in Section 29.3, Tenant shall enter into an agreement for the performance of such change, repair or alteration with the contractors and subcontractors approved by Landlord, as provided in Section 29.3. Before proceeding with any change, repair or alteration Tenant shall (i) provide Landlord with ten (10) days' prior written notice thereof; and (ii) pay to Landlord, within ten (10) days after written demand, the costs of any increased insurance premiums incurred by Landlord as a result of such changes, repairs or alterations. In addition, before proceeding with any change, repair or alteration, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such change, repair or alteration; and (B) a completion and lien indemnity bond, or other surety, satisfactory to Landlord for such change, repair or alteration. Landlord's approval of permits pursuant to Section 29.3 shall not relieve Tenant of the obligation to obtain any other or supplemental permits required by the preceding sentence.

29.5 Tenant shall pay to Landlord, as additional rent, the reasonable costs of Landlord's third party engineers and other consultants (but not Landlord's on-site management personnel) for review and approval of all plans, specifications and working drawings for the change, repair or alteration within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants. In addition to such costs, Tenant shall pay to Landlord, within ten (10) business days after completion of any change, repair or alteration, the actual, reasonable costs incurred by

Landlord for services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the change, repair or alteration to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel.

29.6 All changes, repairs and alterations shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in a first-class and workmanlike manner; (iii) in compliance with all laws, rules, and regulations of all governmental agencies and authorities; (iv) in such a manner so as to not to interfere with the occupancy of any other tenant in the Building, nor impose any additional expense or delay upon Landlord in the maintenance and operation of the Building; and (v) at such times, in such manner and subject to rules and regulations as Landlord may from time to time reasonably designate. Following completion of the work, Tenant shall promptly provide to Landlord a set of "as built" plans and specifications for the work and copies of all warranties and guarantees provided by Tenant's contractors and subcontractors.

29.7 Throughout the performance of any such change, repair or alteration Tenant shall obtain, or cause its contractors to obtain, worker's compensation insurance and general liability insurance covering the work in compliance with provisions of Section 28 of this Lease, and builder's risk insurance for the work reasonably acceptable to Landlord.

29.8 With respect to any construction, alteration, decorating or repair work undertaken by Tenant's contractors under a direct contract with Tenant other than the initial tenant improvement work, Tenant shall pay Landlord as additional rent a fee equal to three percent (3%) of the tenant improvement portion of the contract price in order to compensate Landlord for monitoring the compliance of Tenant's construction with the Building's rules and regulations and the provisions of this Lease. Such fee shall be paid by Tenant to Landlord in monthly progress payments as calculated and billed by Landlord in its reasonable discretion. Tenant shall pay such amounts to Landlord within fifteen (15) days after Tenant's receipt of a billing therefor. Tenant acknowledges that such monitoring of Tenant's construction is for Landlord's benefit only and shall not release Tenant from any obligations hereunder, nor impose on Landlord any obligation to Tenant or any third party relating to Tenant's construction.

In the event Tenant orders any construction, alteration, decorating or repair work directly from Landlord, or from the contractor selected by Landlord, the charges for such work, together with Landlord's administration fee equal to ten percent (10%) of the contract price, shall be deemed additional rent under this Lease, payable upon billing therefor, either in advance of the start of work, or periodically during construction, or upon the substantial completion of such work, at Landlord's option.

29.9 Notwithstanding the provisions of Section 29.2 (ii) and (iii) above, subject to Landlord's and Landlord's Structural Engineer's (as defined in the Lease) review and approval and the other provisions of the Lease, Tenant shall have the right, at Tenant's sole cost and expense, to reinforce the floor load capacity of the Building within the Premises to accommodate Tenant's requirements for floor loading of Tenant's telecommunications equipment, batteries and other office equipment within the Premises. Under no circumstances shall Tenant be permitted to remove or block up any window and/or exterior wall within the Premises.

29.10 Subject to Landlord's and Landlord's Structural Engineer's (as defined in the Lease) review and approval, Tenant shall have the right, at Tenant's sole cost and expense, to relocate any of the Buildings's building systems within the premises which are below the concrete floor deck above. Such building systems may include water pipes, ducts, fire sprinkler systems. Any such relocation must be restored to its original condition upon the expiration or earlier termination of the Lease at Tenant's sole cost and expense. Scheduling and relocation of all such relocation shall be coordinated with and approved by Landlord. However, Landlord reserves the absolute right to disapprove of any such relocation if Landlord determines in its sole discretion that such relocation will create a burden, hardship, or interference with the Building and its other tenants.

30. MECHANIC'S LIENS. Tenant agrees to give Landlord written notice of the commencement date of any alterations, improvements or repairs to be made in, to or upon the Premises not later than ten (10) days prior to the commencement of any such work, in order to give Landlord time to post notices of nonresponsibility. Tenant will not permit any mechanic's, materialman's or other lien to be placed upon the Premises or Building or improvements therein during the term hereof; and in the event that any mechanic's, materialman's or other lien is filed against the Premises or Building or improvements therein in connection with any alteration, repair, improvement or change of, or installation of fixtures or equipment in, the Premises, Tenant shall cause such lien to be released within 10 days after such filing, either by satisfaction of such claim or by posting of a bond. Notwithstanding the foregoing, Landlord shall have the right and privilege at Landlord's option of paying the amount of any such lien or claim, or any portion thereof, without inquiry as to

the validity thereof, and any amounts so paid, including expenses and interest, shall be deemed additional rent hereunder due from Tenant to Landlord upon demand.

31. ALTERNATE SPACE. If the Premises comprise less than a full floor in the Building, Landlord shall have the privilege of moving Tenant to other space in the Building comparable to the Premises, and all terms hereof shall apply to the new space with equal force. In such event Landlord shall give Tenant at least sixty (60) days' prior notice in writing and shall move Tenant's effects to the new space at Landlord's sole cost and expense at such time and in such manner as to inconvenience Tenant as little as practicable.

32. HAZARDOUS MATERIALS.

32.1 In addition to its other obligations under this Lease, Tenant covenants to comply with all laws relating to Hazardous Materials, as defined below, with respect to the Premises and the Building. Tenant shall have the right to use general office supplies typically used in an office area in the ordinary course of business (such as copier toner, liquid paper, glue, ink and cleaning solvents) and items typically used in a comparable telecommunications business, provided that Tenant uses them in the manner for which they were designed and only in accordance with all Hazardous Materials laws and the highest standards prevailing in the industry for such use, and then only in such amounts as may be normal for the office business operations or telecommunications operations conducted by Tenant on the Premises. Except as provided in the preceding sentence, neither Tenant nor any of Tenant's agents, employees, contractors, subtenants, assignees, licensees, invitees, successors, or representatives ("Tenant's Parties") shall use, handle store or dispose of any Hazardous Materials in, on, under or about the Premises, the Building or the site on which the Building is located. Tenant shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises, Building and site to the condition existing prior to the introduction of any such Hazardous Materials by Tenant or any Tenant Parties, provided Landlord's approval of such actions shall first be obtained. Furthermore, Tenant shall immediately notify Landlord of any inquiry, test, investigation or enforcement proceeding by or against Tenant or the Premises concerning the presence of any Hazardous Material.

32.2 Tenant's obligations under Section 27.2 to indemnify, defend and hold Landlord harmless from and against certain Claims shall be deemed to include, without limitation, any and all Claims (as defined in Section 27.2) relating in any way to investigation and clean-up costs, attorneys' fees, consultant fees and court costs that arise during or after the term of this Lease as a result of the breach of any of the obligations and covenants set forth in this Section 32, or relating in any way to any contamination of the Premises, Building or site directly or indirectly arising from the activities of Tenant or any Tenant Parties. Tenant's obligations under the preceding sentence shall survive the expiration or earlier termination of this Lease as to any matters arising prior to such expiration or termination or prior to Tenant's vacation of the Building.

32.3 For purposes of this Lease, the term "Hazardous Materials" shall mean, collectively, asbestos, any petroleum fuel, and any hazardous or toxic substance, material or waste which is or becomes regulated or defined as hazardous or toxic by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance defined as hazardous or toxic under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, et seq.; the California Hazardous Substance Account Act, California Health and Safety Code Sections 25330, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Sections 25100, et seq.; the California Safe Drinking Water and Toxic Health Enforcement Act, California Health and Safety Code Sections 25249.5, et seq.; California Health and Safety Code Sections 25280, et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Treatment Reform Act, California Health and Safety Code Sections 25179.1, et seq.; California Health and Safety Code Sections 25501, et seq. (Hazardous Materials Release Response Plans and Inventory); Petroleum Underground Storage Tank Cleanup, Health and Safety Code Sections 25299.10, et seq.; and the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000, et seq., as such laws may be amended from time to time.

32.4 Tenant acknowledges that as of the date of execution of this Lease, certain portions of the Office Building contain asbestos containing materials as described in asbestos reports on file with Landlord. Landlord has been advised that these materials are non-friable and do not represent a health risk. Landlord agrees that the costs of asbestos removal work in the Building shall not be charged to Tenant or included in the Building's Operating Costs for purposes of calculating Tenant's obligations for rent escalations under Section 4 above. The preceding sentence shall not apply to costs for such work necessitated by the acts or omissions of Tenant or Tenant's Parties (as defined in Section 32.1), including but not limited to alteration work undertaken by Tenant.

33. MISCELLANEOUS.

33.1 No receipt of money by Landlord from Tenant after the termination of this Lease, the service of any notice, the commencement of any suit or final judgment for possession shall reinstate, continue or extend the term of this Lease or affect any such notice, demand, suit or judgment. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Any amount billed by Landlord to Tenant under this Lease or in connection with Tenant's occupancy of space in the Building, which Tenant does not dispute in a written notice delivered to Landlord within thirty days after Tenant's receipt of such billing, shall be conclusively deemed to be correct, and Tenant shall be obligated for such amount. Such thirty-day period to give notice of a dispute shall not be deemed to extend the due date for any payments, but Tenant shall be entitled to make the payment in question under protest by timely giving such notice. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to all obligations of Tenant to Landlord, whether expressly contained in this Lease or imposed by any statute or at common law.

33.2 If any provision of this Lease or its application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Lease or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable to any extent, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; and it is the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

33.3 The covenants and obligations of Tenant pursuant to this Lease shall be independent of performance by Landlord of the covenants and obligations of Landlord pursuant to this Lease, and performance by Tenant of each covenant and obligation of Tenant pursuant to this Lease shall be a condition precedent to the duty of Landlord to perform the covenants and obligations of Landlord pursuant to this Lease.

33.4 The headings of Sections of this Lease are for convenience only and do not define, limit or construe the contents thereof. References made in this Lease to numbered Sections, Paragraphs and Subparagraphs shall refer to numbered Sections, Paragraphs or Subparagraphs of this Lease unless otherwise indicated.

33.5 Where appropriate, words in the singular, including without limitation the words "Landlord" and "Tenant", include the plural, and vice versa. Words in the neuter gender include the masculine and feminine genders, and vice versa, and words in the masculine gender include the feminine gender, and vice versa.

33.6 If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

33.7 Time is of the essence of this Lease. Failure of either party to perform any act strictly within the applicable period specified herein shall entitle the other to exercise all remedies herein contemplated. All references in this Lease to "days" shall mean calendar days unless specifically stated herein to be "business" days.

33.8 This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

33.9 All monetary obligations of Tenant remaining past due ten (10) days or more after the date specified herein for payment shall bear interest until paid at the lesser of (i) the Bank of America prime rate as of the due date plus six percent (6%), or (ii) the maximum rate permitted by law.

33.10 This instrument, along with any riders, exhibits and attachments or other documents referred to in Section M on page 2 (all of which riders, exhibits, attachments and other documents are hereby incorporated into this instrument by this reference), constitutes the entire and exclusive agreement between Landlord and Tenant relating to the Premises, and this agreement and said riders, exhibits and attachments and other documents may be altered, amended or revoked

only by an instrument in writing signed by the party to be charged thereby. All prior or contemporaneous oral agreements, understandings and/or practices relative to the leasing of the Premises are merged herein or revoked hereby. References in this instrument to this "Lease" shall mean, refer to and include this instrument as well as any riders, exhibits, attachments or other documents referred to in Section M, and references to any covenant, condition, obligation and/or undertaking "herein", "hereunder" or "pursuant hereto" (or language of like import) shall mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and such riders, exhibits, attachments or other documents. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, attachments or other documents referred to in Section M unless the context thereof clearly requires the contrary.

33.11 Tenant hereby consents to amendment of this Lease as and to the extent required by any lender which makes a loan to Landlord secured in whole or in part by the Building, provided that no such change shall increase the rent payable hereunder or impair Tenant's use of the Premises.

33.12 Unless otherwise agreed in writing, if Tenant has dealt with any real estate broker or other person or firm with respect to leasing or renting space in the Building, Tenant shall be solely responsible for the payment of any fee due said broker, person or firm and Tenant hereby indemnifies and holds Landlord harmless from and against any liability with respect thereto. Notwithstanding the foregoing, Landlord agrees to pay, and to hold Tenant harmless from, the commission owing to the brokers identified in Section L on page 2, as provided in a separate agreement between Landlord and such brokers.

33.13 Tenant agrees to pay to Landlord as additional rent hereunder any taxes required by law to be paid by Tenant and collected from Tenant by Landlord.

33.14 Submission of this Lease for examination, even though executed by Tenant, shall not bind Landlord in any manner, and no lease or other obligation on the part of Landlord shall arise until this Lease is executed and delivered by Landlord to Tenant. This Lease shall not be binding and in effect until a counterpart hereof has been executed and delivered by the parties, each to the other.

33.15 Tenant shall not cause the recordation of this Lease, a short form memorandum of this Lease or any reference to this Lease.

33.16 Upon ten (10) days' prior written request from Landlord (which Landlord may make at any time during the term but no more often than two times in any calendar year), Tenant shall deliver to Landlord (a) a current financial statement of Tenant and any guarantor of this Lease, and (b) financial statements of Tenant and such guarantor for the two years prior to the current financial statement year. Such statements shall be prepared in accordance with generally acceptable accounting principles, and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer or general partner of Tenant (if Tenant is a corporation or partnership, respectively).

33.17 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default of Landlord) do not constitute personal obligations of the individual partners, directors, officers, shareholders, agents or employees of Landlord or of Landlord's partners or agents, and Tenant shall not seek recourse against any such persons or entities or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord) shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Building and proceeds therefrom, and no other assets of Landlord.

33.18 If Tenant is identified herein as a corporation, then the persons executing this Lease on behalf of Tenant hereby represent that they are duly authorized to execute and deliver this Lease on behalf of Tenant pursuant to Tenant's by-laws or a resolution of its board of directors.

If Tenant is identified herein as a partnership, the undersigned represent that they are all of the general partners of Tenant, that Tenant has been formed under the laws of the State of California, and is duly qualified to do business in the State of California, and that this Lease is being executed on behalf of Tenant. Each of the partners of Tenant executing this Lease agrees that he or she and Tenant are irrevocably bound by execution of any amendment to or modification of this Lease by one or more of the partners of Tenant. Tenant agrees that each new partner in Tenant shall

be obligated under this Lease, in the same fashion as the existing partners, and that each new partner shall execute a copy of this Lease and deliver it to Landlord within 60 days after that partner's admission to the partnership. In the event that such newly admitted partner is a corporation, the principal or principals for whose benefit the corporation has been organized shall execute and deliver to Landlord a lease guaranty in form acceptable to Landlord. Each newly admitted partner in Tenant shall be jointly and severally liable with the remaining partners for the performance and satisfaction of all obligations of the Tenant under this Lease accruing from and after the effective date of the admission of the new partner to the Partnership. If the provisions of this paragraph are satisfied, the admission of a new partner shall not be considered an assignment of the lease for the purposes of Section 17 hereof.

33.19 Subject to the provisions of Section 17 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, that no rights shall inure to the benefit of any transferee of Tenant unless the transfer to such transferee is made in compliance with the provisions of Section 17, and no options or other rights which are expressly made personal to the original Tenant hereunder or in any rider attached hereto shall be assignable to or exercisable by anyone other than the original Tenant under this Lease.

33.20 The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all and any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

33.21 Except for Tenant's identity sign on the entry doors of the Premises and six names to be displayed on the directory board in the lobby of the Building (which signs shall be installed at Tenant's expense and consistent with the Building's signage program and otherwise subject to Landlord's prior written approval), Tenant shall have no right to place any sign upon the Premises, the Building or the site on which the Building is located or which can be seen from outside the Premises.

33.22 The effectiveness of this Lease and Landlord's obligations hereunder are subject to and conditional upon Tenant's delivery to Landlord of a lease guaranty in the form prescribed by Landlord in its sole discretion, fully executed by the guarantor or guarantors specified in Section N on page 2 of this Lease.

34. RULES AND REGULATIONS AFFECTING TELECOMMUNICATIONS USE. Nothing in the Rules and Regulations attached hereto as Exhibit B (or any further rules and regulations promulgated by Landlord as described in Section 22.2) shall be deemed to prohibit Tenant from installing in the Premises telecommunications switching equipment or any other equipment specifically permitted in the other provisions of this Lease, which does not pose a safety hazard or create a nuisance or illegal condition; provided, however, that Tenant shall comply with the provisions of this Lease (including the Rules and Regulations) regarding the moving, installation, operation, use, maintenance, removal, power requirements, and structural support of all such equipment, and shall obtain any approvals from Landlord required under this Lease as to such matters.

35. "AS IS" CONDITION. Tenant is taking the Premises in its "as is" condition existing as of the execution date of this Lease, however, Landlord agrees to deliver the Premises in a broom-clean condition and to make available to Tenant 800 amps, 480 volts, three phase A/C of electrical capacity at the mail electrical vault in the Building, however, Tenant shall be responsible, at Tenant's sole cost and expense, for any and all costs of connecting to The Building's power vault, including the installation costs of a submeter. Landlord shall have no obligation for the construction or modification of tenant improvements for Tenant. In constructing its own tenant improvements to the Premises, Tenant shall comply with the other applicable provisions of this Lease (including but not limited to Section 29) and shall utilize only contractors, materials, mechanics, materialmen, architects and engineers used and currently approved in writing by Landlord for work in the Building.

36. HANDICAP ACCESS REGULATIONS. Notwithstanding anything to the contrary herein, Landlord shall, at Landlord's expense, ensure compliance of the Premises and path-of-travel to the Premises with the California Disabled Access Regulations as enforced by the local building department.

37. RIGHT OF FIRST OFFER. So long as Tenant is not then in default of the Lease beyond any applicable cure period, and Tenant has not received three (3) or more notices of events of default, subject to the conditions set forth hereinbelow, and subject and subordinate to any similar lease, first offer, or first refusal rights currently granted any other current tenants in the Building, Tenant shall be granted the right of first offer ("Right of First Offer") to lease suite 510 located on the 5th floor of the Building ("Right of First Offer Premises"). Landlord will provide Tenant with notice of the

availability of the Right of First Offer Premises and Tenant shall have ten (10) business days to respond to Landlord of its intent to lease such space at the rental rate and on the other terms set forth below. Tenant's failure to timely respond to Landlord's notice hereunder shall be conclusively deemed Tenant's election not to exercise the Right of First Offer granted herein with respect to that particular space and Landlord shall be entitled to lease the Right of First Offer Premises to any other person or entity and this Right of First Offer shall terminate and be of no further force or effect. Notwithstanding any provision of this Paragraph 37 to the contrary, the rights granted herein shall be personal to Tenant and any Affiliate and may not be exercised or assigned voluntarily or involuntarily by, or to any person or entity other than the original Tenant or such Affiliate, and shall not be assignable separate and apart from this Lease.

Landlord shall lease the Right of First Offer Premises to Tenant on the following terms and conditions:

c)	Term Commencement Date:	Upon Delivery of the Right of First Offer Premises to Tenant.
d)	Term Expiration Date:	Co-terminus with the Lease Expiration Date for the original leased Premises (as the same may be extended in accordance with this Lease), or such other date as may be mutually agreed upon between Landlord and Tenant.
e)	Base Rent:	At such rental rate as Landlord determines in its sole and absolute discretion.
f)	Use of Premises:	As stated in the Summary of Lease Terms, Item I pertaining to Premises B.
g)	Tenant Improvements:	As determined by Landlord in its sole and absolute discretion.
h)	Operating Costs and Real Estate Tax Escalations:	Tenant shall pay its proportionate share of any Excess Expenses accruing against the Right of First Refusal Offer leased over the particular expense recovery period for the Base Years immediately prior to the year Tenant takes occupancy of the Right of First Offer Premises. Tenant shall pay Landlord for such Excess Expenses (if any) in the same manner Tenant pays Landlord for Excess Expenses attributed to the initial Premises, as set forth in Section 4.
i)	Condition:	The Right of First Offer Premises will be delivered to the Tenant ("as is") as described in Section 35, however, Landlord shall not perform any demolition work.

38. REVIEW OF OPERATING EXPENSES. So long as Tenant is not then in default of the Lease and Tenant has not received three (3) or more notices of events of default, and notwithstanding anything in the Lease to the contrary, Tenant shall have the right, at Tenant's expense, once each year during the Lease term, after reasonable notice and at reasonable times, to inspect and photocopy Landlord's accounting records at Landlord's office in the event that Tenant maintains a reasonable good faith belief that such records are in error. Tenant shall not have the right to object to any increase in Excess Expenses from one year to the next which is due to any order received by Landlord after the Commencement Date from a governmental agency having jurisdiction over the property, or due to any increase in real estate taxes. If, after such inspection and photocopying, Tenant continues to dispute the amount of Tenant's Excess Expenses, Tenant, or an agent designated by Tenant, shall be entitled, at Tenant's expense, to audit and/or review Landlord's records to determine the proper amount of Tenant's Excess Expenses. Such audit and/or review shall be completed within six (6) months following Tenant's receipt of Landlord's annual statement reflecting Tenant's Excess Expenses. If such audit or review reveals that Landlord has overcharged Tenant, then within thirty (30) days after the results of such audit are made available to Landlord, Landlord shall reimburse Tenant the amount of such overcharge. If the audit reveals that Tenant was undercharged, then within thirty (30) days after the results of the audit are made available to Tenant, Tenant shall reimburse Landlord the amount of such undercharge. Pending resolution of any such exceptions in the foregoing manner, Tenant shall continue paying Tenant's Excess Expenses in the amounts determined by Landlord, subject to adjustment after any such exceptions are so resolved. Tenant shall keep strictly confidential the audit, its objection to any increase in Excess Expenses, and the results of any audit which may be conducted pursuant to this provision and shall not disclose same to any person, including any former or present tenant of the Building, other than its professional advisers. Tenant shall cause its professional advisers and their respective employees, consultants and

agents to strictly comply with the terms of this confidentiality provision. In addition to any other right or remedy which Landlord may have as a consequence of a breach of this confidentiality provision by Tenant or its advisers, Tenant's audit rights under this paragraph shall be null and void.

39. FINANCIAL STATEMENTS. Tenant represents that the financial statements furnished to Landlord, for its review prior to the date of execution hereof, and all subsequently provided financial statements, are true, correct and complete.

40. ROOF SPACE. Subject to Landlord's structural engineer's ("Landlord's Structural Engineer') review and aoproval and the rights of tenants under pre-existing leases, Tenant shall have the non-exclusive right throughout the term of the lease, to use certain available space (the "Roof Space") on the roof of the Building. The Roof Space shall be used by Tenant only for the installation and operation of a Tenant-serving antennae in a space not exceeding 100 square feet and of approximately 300 tons of HVAC for the switch equipment on the roof, plus appropriate HVAC equipment that meets the tonnage requirement for the office use, in an area approximately 1,500 square feet. The installation and operation of equipment in the Roof Space shall be at the sole cost and expense of Tenant (including, but not limited to, costs of electrical supply, which, if Landlord so elects, shall be metered separately to Tenant at Tenant's expense). Such installation and operation shall be done in compliance with the other provisions of this Lease and shall require Landlord's prior written approval of the items listed in Section 29.3. Such approval may be conditioned, among other things, upon Tenant's making or paying for any reinforcement to the Roof Space reasonably deemed necessary by Landlord and/or Landlord's Structural Engineer to support Tenant's equipment. Tenant shall reimburse Landlord for any reasonable costs incurred for the review of Tenant's plans for work proposed to be performed on the Roof Space performed by Landlord's Structural Engineer or other third party consultants to Landlord. Any such equipment constructed or installed by Tenant pursuant to this section shall be for the exclusive use of Tenant during the term of the Lease.

Landlord may, in its sole discretion, at the expiration or termination of the Lease require Tenant, at Tenant's sole cost and expense, to remove any such antennae and HVAC equipment. Tenant Shall repair any damage to the Building, Premises and Roof Space occasioned by the installation, construction, operation and/or removal of any fixtures, trade fixtures, equipment, additions, repairs, improvements and/or appurtenances pursuant to this section. If Tenant shall fail to complete such removal and repair such damage, Landlord may do so and may charge the reasonable cost thereof to Tenant.

IN WITNESS WHEREOF, this instrument has been duly executed by the parties hereto, as of the date first above written.

TENANT:
Pacific Internet Exchange Corporation
a Delaware corporation

By: /s/ RICHARD H. KALBRENER

Name: RICHARD H. KALBRENER

Its: PRESIDENT

By: _____

Name: _____

Its: _____

LANDLORD:
DOWNTOWN PROPERTIES, LLC,
a California limited liability company

By: Downtown Asset Management, Inc.
a California corporation

By: /s/ GOODWIN GAW

Name: Goodwin Gaw
Its: President

Dated **October 15, 2001**

DOWNTOWN PROPERTIES, LLC

AND

PIHANA PACIFIC, INC.

(FORMERLY KNOWN AS

PACIFIC INTERNET EXCHANGE CORPORATION)

FIRST AMENDMENT AGREEMENT

relating to
the Lease dated April 10, 2000 for the 6th and 8th Floors
of 818 West Seventh Street, Los Angeles, California 90017

White & Case
Solicitors
9th Floor, Gloucester Tower
The Landmark
11 Pedder Street
Hong Kong

THIS AMENDMENT AGREEMENT (this **"Agreement"**) is made on October 15, 2001

BETWEEN:

DOWNTOWN PROPERTIES, LLC, a California limited liability company whose principal office is situated at 633 West Fifth Street, 56th Floor, Los Angeles, California 90071 (the "Landlord"); and

PIHANA PACIFIC, INC., (formerly known as Pacific Internet Exchange Corporation) a company incorporated in the state of Delaware whose principal office is situated at 1100 Alakea Street, 30th Floor, Honolulu, HI 96813 (the **"Tenant"**)

WHEREAS:

(A) The Landlord and Tenant have entered into a lease dated April 10, 2000 (the "Lease") for the premises on the 6th and 8th floors of the building located at 818 West Seventh Street, Los Angeles, California 90017.

(B) The Landlord and Tenant have agreed to effect certain amendments to the provisions of the Lease as hereinafter set out.

NOW THEREFORE, in consideration of the mutual covenants herein expressed and for other and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. INTERPRETATION

Unless otherwise defined, words and expressions defined in the Lease shall bear the same meanings when used in this Agreement.

2. OPERATIVE PROVISIONS

The Lease shall be and is hereby amended as follows:

(i) Section I of the Summary of Lease Terms shall be deleted in its entirety and replaced with the following:

> "I. Permitted Use: General office use and the installation, operation and maintenance of equipment in connection with Tenant's telecommunications switching equipment, Internet, Internet co-location, Internet data center business and related activities."

(ii) Section 17 of the Lease shall be deleted in its entirety and replaced with the following:

"17. ASSIGNMENT AND SUBLETTING.

17.1 Tenant shall not assign or sublet all or any portion of the Premises except that Tenant may, on prior notice to Landlord, assign or sublet all or a portion of the Premises at any time during the term of the Lease to any corporation or entity which (i) is a wholly owned subsidiary of Tenant; (ii) is a corporation which Tenant owns (directly or indirectly) in excess of 51% of the issued and outstanding shares; (iii) is controlling, controlled by or under common control with Tenant, (including assignment or subletting to any corporation resulting from a merger or consolidation with Tenant); or (iv) acquires substantially all of the assets of Tenant's business as a going concern; in each case without securing Landlord's written approval or consent, provided however that Tenant (a) remains liable for all obligations pursuant to the Lease and (b) such assignee, sublessee or transferee assumes the obligations of Tenant under the Lease by a document reasonably satisfactory to Landlord.

17.2 Except as provided in this Section 17, Tenant shall not sublet all or any part of the Premises, nor assign this Lease, without Landlord's express prior written consent, which consent shall not unreasonably be withheld provided that Tenant shall notify Landlord of its intention so to do and shall provide Landlord for its approval of draft of the proposed assignment agreement or the proposed sub-tenancy agreement conforming to a standard form agreement provided by Landlord and particulars of:

(a) The name and address of the proposed assignee or subtenant;

(b) The business proposed to be carried on by the proposed assignee or sub-tenant at the Premises or, if applicable, at the portion of the Premises proposed to be sub-let;

(c) In the case of a sublease of less than all of the Premises, the portion of the Premises proposed to be sub-let accompanied by a plan showing the position and dimensions thereof which plan shall be annexed to the sub-tenancy agreement;

(d) In the case of a sublease for less than the full term of this Lease, the term of the proposed sub-letting; and

(e) The proposed rent and other charges to be paid by the proposed assignee or the proposed sub-tenant.

In order to assist Landlord in evaluating any proposed assignment or sublease, Tenant agrees to provide Landlord with the proposed assignee's or subtenant's current financial statement and financial statements for the preceding 2 years (if any) and such other information concerning the business background and financial condition of the proposed assignee or subtenant and of Tenant as Landlord may reasonably request.

Landlord and Tenant hereby agree that Landlord's disapproval of any proposed assignment or sublease hereunder shall be deemed reasonable if based upon any reasonable factor, including, without limitation, any or all of the following factors:

(a) The proposed transfer would result in more than three subleases of portions of the Premises being in effect at any time during the term;

(b) The rent payable by the proposed transferee would be less than the fair market rental value for the space as determined pursuant to the last paragraph of this Section 17.2 (except as otherwise provided in Section 17.5);

(c) The proposed transferee is an existing tenant or occupant of the Building or has negotiated with Landlord within the last twelve months for space in the Building or is another subtenant prohibited by the next to last paragraph of this Section 17.2;

(d) The proposed transferee is a governmental entity;

(e) The transaction calls for new demising walls to be built, and the portion of the Premises proposed to be sublet or assigned has inadequate means of ingress and egress;

(f) The use of the Premises by the proposed transferee (i) is not permitted by the use provisions of this Lease, or (ii) might, in Landlord's reasonable opinion, violate any right for an exclusive use granted by Landlord to another Tenant in the Building;

(g) The transfer would likely result, in Landlord's reasonable opinion, in a significant increase in the use of the parking areas or common areas of the Building due to the transferee's employees or visitors, and/or significant increase in the demand for utilities and services to be provided by Landlord to the Premises;

(h) The proposed transferee does not, in Landlord's reasonable opinion, have the financial capability to fulfill the obligations imposed by the transfer, or, in case of an assignment, the assignee does not have income and net worth at least equal to that of Tenant;

(i) The proposed transferee is not, in Landlord's reasonable opinion, of reputable or good character or consistent with Landlord's desired tenant mix;

(j) The proposed transferee is a real estate developer or landlord or is acting directly or indirectly on behalf of a real estate developer or landlord;

(k) The proposed transferee may, in Landlord's reasonable opinion, increase the chances of significant hazardous waste contamination within the Premises or the Building;

(l) In the reasonable judgment of Landlord, the purpose for which the transferee intends to use the Premises is not in keeping with the reasonable standards of Landlord for the Building or is in violation of the terms of any other lease in the Building; or

(m) In the case of a sublease, the term or duration of the sublease is granted for a period, which would extend beyond the expiration date of the Lease Term.

Neither this Lease or the term hereby demised shall be mortgaged by Tenant, nor shall Tenant mortgage, assign, pledge or otherwise transfer the interest of Tenant in and to any sublease or rentals payable thereunder or in the Security Deposit.

Any sublease, assignment, mortgage, pledge, encumbrance, or transfer made in violation of this Section 17.2 shall be void and at Landlord's election shall terminate this Lease.

Each subtenant or assignee of Tenant shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent, and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease (provided that in the case of a sublease, the subtenant's obligations shall be limited to those obligations relating to the subleased space and the common areas during the sublease term). No sublease or assignment shall be deemed approved by Landlord unless such subtenant or assignee and Tenant shall deliver to Landlord a counterpart of such sublease or assignment and an instrument in a form acceptable to Landlord, which contains a covenant of assumption by the subtenant or assignee satisfactory in substance and form to Landlord, consistent with the requirements of this Section 17.2, but the failure or refusal of the subtenant or assignee to execute such instrument of assumption shall not release or discharge the subtenant or assignee from its liability as set forth above.

No subtenant or assignee not complying with the foregoing requirements shall have any interest in the Security Deposit. Any assignee that does comply with the foregoing requirements shall automatically succeed to Tenant's position with respect to the Security Deposit, and Landlord shall have the right to refund all or any portion of the Security Deposit to the assignee at any time or under any circumstances with no liability to the assignor.

Landlord may require that the assignee or subtenant remit directly to Landlord on a monthly basis, all monies due to Tenant by said assignee or subtenant. In such event Landlord shall apply the sums received to the obligations of Tenant and its successors under this Lease.

In the event of default by any assignee or subtenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor.

Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with the assignee or other successor of Tenant, and without obtaining Tenant's consent thereto, and any such actions shall not relieve Tenant of liability under this Lease; provided, however, that Tenant shall not be bound by nor have any

liability under any change, modification or amendment to this Lease entered into by Landlord and any assignee or other successor of Tenant, unless Tenant shall have consented in writing to such change, modification or amendment.

Consent by Landlord to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

Tenant agrees that all advertising by Tenant to market the space in the Premises to be sublet or assigned shall require Landlord's prior written approval, which shall not be unreasonably withheld. Tenant further agrees that it shall not, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole discretion, market any space in the Premises, assign the lease or sublet any space in the Premises to existing tenants or occupants of the Building, or to any entity controlling, controlled by, or under common control with any existing tenant or occupant of the Building, except for any entity controlling, controlled by or under common control with Tenant.

Tenant agrees that it shall not sublet, nor assign, nor advertise as available for subletting or assignment, nor list with brokers for subletting or assignment, all or any portion of the Premises for a consideration which is equal to less than the fair market rental value, as determined by Landlord in its reasonable discretion, for comparable space in the Building for a comparable term commencing concurrently with the assignment or sublease term, with comparable rent credits and tenant improvement allowances. Within ten (10) days after Landlord receives any written request from Tenant for Landlord's estimate of the fair market rental value for specified space (which request shall identify the space in question, the proposed term and the proposed rent credits and improvement allowances), Landlord shall notify Tenant in writing of the fair market rental value for such space for a comparable term with comparable rent credits and tenant improvement allowances.

17.3 In the event that Tenant has sought and received Landlord's consent to assign this Lease, or to enter into a sublease as to all or any portion of the Premises, the monthly rent payable by Tenant to Landlord, pursuant to Section 3, shall be increased by fifty percent (50%) of the amount to be received by Tenant during each month pursuant to the terms of the assignment or sublease, in excess of Tenant's monthly rental payable to Landlord for the space subject to the assignment or sublease. The amounts referred to in the previous sentence include rent, additional rent, or any other payment in respect of use or occupancy, but shall not include taxes and those amounts referable to the reimbursement of costs of leasehold improvements installed by Tenant, which shall be valued by an independent third party mutually as may be agreed by Tenant and Landlord, and whether paid in a lump sum or periodic payments; provided however, such amounts shall not include any fees charged by Tenant to its Customers to the extent such fees are based on Tenant's services (not square footage of space used by the Customers) as provided under Section 17.5 herein. In no event shall the total sums payable to Landlord be less than the monthly rental Landlord would have received but for such assignment or sublease.

The additional rent shall be due and payable to Landlord in accordance with the schedule specified in the sublease or assignment instrument, and the failure of any subtenant or assignee to

make any payments in accordance with that schedule shall not affect the obligation of Tenant to pay the additional rent to Landlord.

The calculation of the amount of rentable space being sublet shall be made by Landlord in accordance with its usual standards. Landlord may require acknowledgment by Tenant of Tenant's concurrence on Landlord's calculation of the amount of rentable space being sublet as a condition to Landlord's consent to any sublease.

The provisions of a sublease or assignment instrument consented to by Landlord cannot be modified, nor the sublease or assignment terminated, other than in accordance with its terms, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. The terms of this Section 17.3 shall apply to any subleasing or assignment by any subtenant or assignee.

17.4 Tenant shall pay to Landlord, promptly upon receipt of a billing from Landlord, the amount of Landlord's reasonable legal costs incurred in connection with Landlord's review or approval of any sublease or assignment transaction requiring Landlord's consent hereunder.

17.5 Landlord acknowledges that Tenant is entitled to carry on any activities within the Premises contemplated by Section I of the Summary of Lease terms and Section 8 hereof without the need for any approval, consent or waiver from Landlord (except as expressly otherwise provided). Furthermore, Landlord acknowledges that such activities require the presence in the Premises, for connection to Tenant's terminal facilities, of certain communications equipment ("Interface Equipment") of customers of Tenant (collectively "Customers") in order that Tenant can provide telecommunications services to Customers, including, without limitation, Internet co-location, switching and routing services (collectively, "Co-Location Services"). Notwithstanding anything to the contrary in this Article 17 or elsewhere in this Lease, but subject to the terms and conditions of this Section 17.5, Tenant shall not be obliged to seek Landlord's approval or consent to any sublease, license, co-location, carrier service, or similar arrangement or agreement (collectively, "co-location agreements") which has the limited purpose and effect of permitting a Customer to install and maintain Interface Equipment in the Premises in order to use Co-Location Services. Tenant will ensure that the Customers under the co-location agreements will not use or occupy space within the Premises that exceeds, in the aggregate, sixty-five percent (65%) of the total rentable area of the Premises. Tenant represents to Landlord that such co-location agreements will require access by each Customer to the Premises only on an infrequent basis, and only when accompanied by a representative of Tenant. Each Customer using Tenant's Co-location Services shall, prior to commencing such usage, execute a written co-location agreement in substantially the form approved in advance by Landlord. Prior to the date hereof Landlord has been provided with Tenant's standard form co-location and carrier services agreements, which are hereby approved by Landlord. Copies of such approved agreement forms are attached hereto as Exhibits "H" and "I", respectively. Before material amendments affecting Landlord's rights as set forth therein and herein are made to any such standard forms during the term of this Lease, Tenant will provide Landlord with a revised version thereof for the Landlord's approval, which approval shall not be unreasonably withheld, conditional or delayed. Landlord shall keep the terms of these forms of co-location agreements, as amended, confidential. The forms shall: (a) conform to and be consistent with the provisions

of this Lease; (b) shall state that this Lease is prior and shall remain in all respects prior and superior to the co-location agreement and that the co-location agreement does not modify this Lease; (c) state that Landlord is not joining in nor bound by any agreement, representation or warranty contained in the co-location agreement, and (d) shall have attached a copy of the Building's then current rules and regulations to be given to Tenant's Customers. Any matter that requires Landlord's approval under this Lease shall continue to require such approval. Tenant's Customers shall obtain directly from Tenant any copies Tenant's Customer requires of the applicable terms of this Lease, and Landlord shall have no obligation in that regard. Upon any termination of this Lease, whether due to agreement, default or expiration of the term, Tenant's Customers shall immediately surrender possession of the Premises, including the equipment space, to Landlord. Tenant agrees to be liable to Landlord for any violation by Tenant's Customers of any provisions of this Lease. Landlord's advance consent in this Lease to these transactions is not a waiver of any of Landlord's rights under this Lease as to Tenant. Tenant shall within five (5) Business Days after the last day of each calendar month provide Landlord with a list of the names and notice addresses of those Customers who have executed co-location or carrier services agreements during that month, together with a list of the names and notice addresses all sublicensees or assignees of co-location agreement rights of Customers under sublicenses or assignments executed during such month; provided that, in no event, shall Tenant be required to disclose the unique commercial terms of an individual Customer co-location or carrier services agreement. Landlord agrees to keep the names and notice addresses of the Customers confidential and will not disclose such information except as otherwise required by law or in case of emergency.

(iii) Exhibit F to the Lease (Notice and Agreement) shall be deleted in its entirety and all references to Exhibit F in the Lease shall be deleted.

3. ACKNOWLEDGMENT AND CONSENT

The Landlord hereby consents to and acknowledges the Tenant having entered into or entering into the following co-location and carrier services agreements, as the case may be, upon the terms and conditions contained therein which Tenant represents and warrants to Landlord are substantially consistent with the approved agreement forms attached hereto as Exhibits "H" and "I":

(a) a co-location agreement with Looking Glass Networks Inc. dated March 19, 2001.

(b) a co-location agreement with Hicent Telecom USA Inc. dated March 6, 2001;

(c) a co-location agreement with QoS Networks Service (US), Inc. dated March 5, 2001;

(d) a co-location agreement with Cogent Communications, LLC dated February 16, 2001;

(e) a co-location agreement with ColoPro.Com, Inc. dated February 15, 2001;

(f) a co-location agreement with Broadband Highway, Inc. dated February 8, 2001;

(g) a carrier services agreement with Qwest Communications Corporation dated February 5, 2001;

(h) a carrier services agreement with MCI Worldcom Communications, Inc. dated December 15, 2000; and

(i) a carrier services agreement with Level 3 Communications, Inc. dated November 27, 2000.

4. CONDITION ON SURRENDER

Notwithstanding anything to the contrary in Article 15 or elsewhere in the Lease, upon the expiration or earlier termination of the Lease, Tenant shall have the right to remove or demolish all fixtures and improvements installed by Tenant in that portion of the Premises located on the 8 th floor of the Building (the "8 th Floor Portion") and to surrender possession of the 8 th Floor Portion of Premises in a "bare concrete" condition. Tenant shall have the same right to surrender possession of the portion of the Premises located on the 6 th floor of the Building (the "6 th Floor Portion") in a bare concrete condition with all fixtures and improvement installed by Tenant removed; provided, however, that with respect to the 6 th Floor Portion, Landlord shall have the option to require Tenant to leave and/or restore fundamental building systems therein in good working order and condition, such building systems to include, without limitation, the ceiling, the HVAC system (including ducting therefore), and lighting, all of which systems shall be in at least as good as a condition as existed on the day Tenant took possession of the 6th Floor Portion. Landlord shall exercise such option, if at all, in Landlord's sole discretion, by delivering written notice to Tenant of such exercise not later than three (3) months prior to the expiration of the Lease Term.

5. ROOF SPACE

Subject to Landlord's structural engineer's ("Landlord's Structural Engineer") review and approval, in the same manner as described in Exhibit C to the Lease, Tenant shall have the nonexclusive right throughout the term of the Lease, to use certain space (the "Roof Space") on the roof of the Building, in an area containing approximately 1,500 square feet, at the rate of $1.00 per square foot per month, for the installation of equipment required for Tenant's use of the Premises, such as supplemental HVAC, antenna or other equipment. This is in addition to the roof space referred to in Article 40 of the Lease.

The installation of such equipment shall be subject to Landlord's prior written approval and Tenant's compliance with all requirements and regulations of the City of Los Angeles or other applicable governmental agency, as to location and manner of installation, and shall be subject to Tenant providing Landlord with reasonable evidence that such installation will not interfere with the structural integrity or water tightness of the roof, or in the alternative, Tenant shall make such additional improvements, reasonably satisfactory to Landlord, as may be required to insure the structural integrity and water tightness of the roof. Tenant hereby agrees to indemnify, defend, protect and hold Landlord harmless from and against any damage to the Building and any Claims, including reasonable attorneys' fees, expenses and liabilities incurred by Landlord in

connection with any such Claim, arising out of Tenant's installation, use and/or removal of the aforementioned equipment of Tenant located on the roof of the Building, including, without limitation, any damage to the roof or other portions of the Building.

Landlord may, in its sole discretion, at the expiration or termination of the Lease require Tenant, at Tenant's sole cost and expense, to remove any dry cooler, condenser units, antennas, and/or other such equipment installed by or for Tenant in or on the Roof Space. Tenant shall repair any damage to the Building, Premises and Roof Space occasioned by the installation, construction, operation and/or removal of any fixtures, trade fixtures, equipment, additions, repairs, improvements and/or appurtenances pursuant to this section. If Tenant shall fail to complete such removal and repair such damage, Landlord may do and may charge the reasonable cost thereof to Tenant.

6. ELECTRICITY

Landlord and Tenant acknowledge that pursuant to the Back Up Power Generator Rider to the Lease, Tenant has taken possession of certain platform space adjacent to the Building and has installed thereon two (2) backup power generators, (with future plans for an additional three [3] such generators of which Tenant may install, in its sole discretion, one or more, subject to its buildout schedule of the Eighth Floor Portion of the Premises), and various related improvements, including without limitation a power substation from which Tenant will obtain electric supply for the Premises directly from the Los Angeles Department of Water and Power ("DWP"). All equipment and improvements have been or will be installed in accordance with plans and specifications previously approved by Landlord in accordance with the Lease. Accordingly, notwithstanding anything to the contrary in Articles 9.2 and 35, or elsewhere in the Lease, from and after the date upon which Tenant has to its own satisfaction tested the reliability and adequacy of said electrical power to the Premises from the aforementioned power substation and given written notice to Landlord of its aforesaid satisfaction, then Landlord shall have no further obligation to provide or make available any electrical power to the Premises and all of Tenant's electrical needs and requirements for all of its operations in the Premises shall be provided thereafter directly by (and paid for by Tenant directly to) DWP, independently from Landlord or any of Landlord's Building Systems, through Tenant's power substation and back up generator system facilities, and Tenant will have no further obligation to pay Landlord for any consumed electrical power, not separately metered, in the Premises.

Tenant shall use its best efforts to cause the DWP to activate or provide electricity to the power substation as soon as is reasonably possible, and thereafter to complete its conversion to the power substation as the sole source of electrical power to the Premises (the "Conversion"). Tenant shall complete the Conversion and testing of the power substation within three (3) months from the date DWP first activates or provides electricity to the power substation (the "Activation Date"). In the case of any event beyond the control of Tenant, such as fire, explosion or other similar casualty, design flaws, equipment failure or DWP negligence (collectively a "Casualty") which causes Tenant to fail to complete the Conversion within three (3) months after the Activation Date, Tenant shall have a maximum of twelve (12) months from the date hereof to have its power substation operational and in use. Should Tenant fail to use best efforts to cause the Activation Date to occur as soon as reasonably possible, or should

Tenant fail, despite its best efforts, to complete and approve the Conversion within three (3) months after the Activation Date, or, in the event of a Casualty, within twelve (12) months from the date hereof, then commencing immediately upon Landlord's notice to Tenant of such failure, Tenant shall pay Landlord, as additional rent, in addition to all other rent and charges payable by Tenant under the Lease, a resource reservation fee of $10,000 per month until such time as Tenant's power substation becomes operational and Tenant has completed its Conversion thereto. Tenant acknowledges that actual damages from Tenant's failure to complete the Conversion within the aforementioned deadlines would be extremely difficult to ascertain and that this resource reservation fee is a reasonable estimate of Landlord's administrative costs and expenses and loss of use costs likely to result from Tenant's occupancy of the platform and usage of Building electrical resources.

Tenant shall keep Landlord fully apprised of Tenant's progress in accomplishing the Conversion by providing an update to Landlord's engineer, Dean David (telephone number: 213/213-8626), or such other representative of Landlord as Landlord may designate, no less frequently than weekly. Additionally, Tenant shall notify Landlord of the Activation Date in writing by no later than three (3) business days after the occurrence of Activation Date.

7. EFFECT OF THIS AGREEMENT

Save as expressly amended by this Agreement, the Lease shall remain in full force and effect and nothing contained in this Agreement shall abrogate, prejudice diminish or otherwise affect any rights, remedies or obligations of the parties arising before the date of this Agreement.

8. COSTS AND EXPENSES

Each of the parties hereto shall bear their own legal costs incurred in connection with the preparation and negotiation of this Agreement.

9. GENERAL

(a) The provisions set out in sections 33.2 to 33.8 and sections 33.18 and 33.19 of the Lease shall apply to this Agreement as if set out in full herein except that all references to "this Lease" in those sections shall be read as "this Agreement".

(b) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS whereof this Agreement has been entered into by the parties on the day and year first above written.

DOWNTOWN PROPERTIES, LLC

By: Mas Asset Management Corporation
Its: Managing Agent

By: /s/ WILLY K. MA

Willy K. Ma
Its: President

PIHANA PACIFIC, INC.

By: /s/ RICHARD H. KALBRENER

Its: President

SECOND AMENDMENT TO LEASE

This "Second Amendment to Lease" is dated for reference purposes only as of December 30, 2002 and is entered into by and between Downtown Properties, LLC, a California limited liability company ("Landlord") and Pihana Pacific, Inc., a Delaware corporation (formerly known as Pacific Internet Exchange Corporation) ("Tenant"), with reference to the following facts and circumstances:

RECITALS

A. Landlord and Tenant are parties to that certain "Lease" made as of April 10, 2000 and that certain "First Amendment Agreement" dated October 15, 2001 (collectively, the "Lease") pursuant to which (amongst other terms and conditions) Tenant leased from Landlord the entire sixth (6 th) and eighth (8th) floors of the improved real property commonly known as 818 West 7th Street, Los Angeles, California 90017. All capitalized terms used in this Amendment shall have the same meaning given to them in the Lease except as otherwise expressly defined herein.

B. Landlord and Tenant desire hereby to amend the Lease in the manner set forth below.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN, AND FOR GCOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH ARE HEREBY ACKNOWLEDGED, LANDLORD AND TENANT AGREE AS FOLLOW

1. Lease Amendments.

a. Surrender of Must-Take Premises. Effective as of January 1, 2003 (the "Surrender Date") Landlord and Tenant terminate the Lease as it applies to the Must-Take Premises consisting of the entire eighth (8th) floor of the Building., Tenant shall surrender and quitclaim to Landlord all right, title and interest of Tenant under the Lease (and otherwise) in and to the Must-Take Premises consisting of the entire eighth (8 th) floor of the Building on the Surrender Date. Tenant represents to Landlord that it has not assigned or subleased the Must-Take Premises nor granted or conveyed any title, right or interest to any other person or entity in and to the Must-Take Premises and Tenant further represents to Landlord that Tenant is not currently occupying the Must-Take Premises. On the Surrender Date, Tenant shall deliver and surrender possession of the Must-Take Premises to Landlord broom-clean and in the same condition as of the date of this Amendment and shall deliver all keys to the Must-Take Premises in its possession to Landlord. Tenant shall remove from the Must-Take Premises at its sole cost and expense prior to the Surrender Date all furnishings, fixtures and equipment placed or stored by Tenant in the Must-Take Premises and Tenant irrevocably agrees that any Tenant personal property located at the Must-Take Premises from and after the Surrender Date conclusively shall be deemed abandoned by Tenant and may be disposed of by Landlord at Tenant's expense in any manner determined by Landlord in its sole and absolute discretion. Without limiting the generality of the foregoing, Tenant shall not remove from the Must-Take Premises any fundamental building systems including, without limitation the ceiling, HVAC system, cabling, wiring, conduit, electrical and mechanical systems and components and lighting which exist in the Must-Take Premises as of the date of this Second Amendment. Except as otherwise

modified by this Second Amendment to Lease, Tenant's duties, responsibilities, liabilities and obligations under the Lease in respect of the Must-Take Premises shall continue in full force and effect through and including the Surrender Date and all covenants and obligations of Tenant under the Lease which survive the expiration or termination of the Lease shall survive the Surrender Date and the surrender of the Must-Take Premises, including without limitation Tenant's indemnity obligations under Lease Section 27.2 (but for the avoidance of doubt, excluding Tenant's obligations under Section 15 of the Lease). Tenant's duties, responsibilities, liabilities and obligations in respect of the Initial Premises shall remain in full force and effect.

b. Rental Payment. Tenant shall pay to Landlord the cash sum of $1,600,000.00 (the "Termination Fee") in partial consideration of Landlord's agreement to accept Tenant's surrender of the Must-Take Premises and Tenant shall not be entitled to any refund, offset or other consideration in the event of early termination of the Lease or in the event that Landlord pursues any remedy for breach of Lease or other default. The Termination Fee shall be paid by Tenant to Landlord in the following manner: (i) the Landlord shall have the right to claim against the letter of credit established by Tenant pursuant to Section 6 of the Lease in the amount of FIVE HUNDRED FORTY THOUSAND UNITED STATES DOLLARS EXACTLY (US$ 540,000.00); and (ii) the remaining ONE MILLION SIXTY THOUSAND UNITED STATES DOLLARS EXACTLY (US$ 1,060,000.00) to be paid by Tenant within ten (10) days of the date of this Addendum. Tenant conclusively and irrevocably agrees that all conditions to a full draw under the LC have been met and Tenant shall so advise or confirm to the LC issuer if so requested by such issuer and shall not otherwise object or interfere with Landlord's draw on the LC. If the issuer of the LC fails or refuses to timely honor Landlord's draw request, then Tenant shall make a cash payment to Landlord in the amount of $540,000.00 within ten (10) days of Tenant's receipt of Landlord's notice of the issuer's failure to honor the draw request. Tenant agrees that upon execution hereof the cash security deposit held by Landlord is non-refundable and shall not be returned to Tenant upon expiration or termination of the Lease and may be used by Landlord for any purpose from time to time hereafter.

c. Electricity. Tenant represents and warrants to Landlord that: (i) the DWP power substation (the "Substation") has been installed in accordance with the Lease, the Conversion has occurred, Landlord has no obligation to provide or make available to Tenant any electrical power to the Premises and all of Tenant's present and future electrical needs are and shall be provided exclusively by the Substation; (ii) Tenant consumes not more than three (3) Mva of electrical power from the Substation which has a maximum output of not less than six (6) Mva; (iii) Tenant has constructed and fully paid for the power platform adjacent to the Building ("Platform Space"), has installed thereon two (2) Backup Power Generators and the Substation, and there is sufficient unused platform space to receive no fewer than three (3) additional Backup Power Generators similarly sized to the two (2) Backup Power Generators (the "Additional Backup Power Generator Space"); and (iv) Tenant has not assigned, subleased, granted or conveyed to any person or entity any present of future right to consume electrical power to be generated by the Substation in excess of three (3) Mva currently used by Tenant or install additional Backup Power Generators in the Additional Backup Power Generator Space or to use, lease or license all or any portion of the Additional Backup Power Generator Space. As partial consideration for Landlord's agreement to accept the surrender of the Must-Take Premises as provided above, Tenant agrees that: (i) for the remainder of the Lease term (as same may be extended or renewed) it shall not consume or use more than three (3) Mva of power from the Substation and

hereby grants to Landlord and its assignees and mortgagees (including without limitation any current or future tenants of the Building and any other real property owned by Landlord or its successors or assigns) the exclusive right to consume, use, sell, re-sell, lease or license all power generated by the Substation in excess of three (3) Mva; and (ii) Landlord and its assignees and mortgagees (including without limitation any current or future tenants of the Building and any other real property owned by Landlord or its successors or assigns) shall have the sole and exclusive right to sub-lease, occupy, use and enjoy the Additional Backup Power Generator Space and to install at Landlord's sole cost and expense one or more Backup Power Generators for the exclusive use of Landlord and its assignees and mortgagees (including without limitation any current or future tenants of the Building and any other real property owned by Landlord or its successors and assigns. Landlord recognizes and agrees that it shall pay for any and all costs and expenses incurred by it (i) in the use, operation and improvement of the Additional Backup Power Generator Space and (ii) in order to use the additional three (3) Mva produced by the Substation. Furthermore, Tenant shall continue to pay real property taxes for the Additional Backup Power Generator Space until Landlord or its assignees (including without limitation any current or future tenants of the Building and any other real property owned by Landlord or its successors or assigns) begin to use the same, at which time, Tenant and Landlord shall pay their pro-rata share of any real property taxes for the Platform Space. Landlord shall be liable for, and shall pay at least ten (10) days before delinquency, and Landlord hereby indemnifies and holds Tenant harmless from and against any liability in connection with, all taxes levied directly or indirectly against any personal property or equipment placed by Landlord or its assignees on or about the Platform Space. Landlord and Tenant shall share equally any other common expenses incurred by either for the regular maintenance and repair of the Platform Space. Landlord shall be responsible for paying for and/or reimbursing Tenant for any fuel used by Landlord in connection with the use of the Additional Backup Power Generator Space as reasonably determined by Tenant. Tenant may require Landlord to enter into a mutually agreeable license agreement consistent with this paragraph 1(c) prior to Landlord occupying or using the Additional Backup Generator Space. If Tenant fails to store a volume of fuel sufficient for Landlord's use as permitted hereunder or fails to maintain or repair the fuel tank, then Landlord shall have the right but not the obligation to fill the tank with and pay for an adequate volume of fuel and cause the tank to be maintained and repaired at Tenant's expense.

2. Release. Tenant represents and warrants to Landlord that, as of the Surrender Date, Landlord has fully performed its obligations under the Lease and Tenant has no claims against Landlord or defenses or offsets against payment of Base Rent or any other sum due and owing under the Lease. Tenant waives and releases Landlord from any action, cause of action, claim or demand which Tenant may have, known or unknown, as of the date hereof relating to any alleged default or event of default by Landlord in respect of the Must Take Premises as of the date hereof. Upon the Surrender Date, except as otherwise provided in paragraph 1 (a) above, Landlord shall be deemed to unconditionally release and forever discharge Tenant and Tenant's representatives, officers, shareholders and employees, from any and all claims, actions, demands, and causes of action, and all liability whatsoever, now or in the future arising out of or in connection with the Lease as it relates to the Must Take Premises.

3. Full Force and Effect. The Lease amended hereby is and shall remain in full force and effect.

4. Guaranty Required. It shall be a condition precedent to the effectiveness of this Agreement that Equinix, Inc., a Delaware corporation execute and deliver to Landlord a guaranty of lease in the form attached to hereto as Exhibit "A" and incorporated by this reference, guaranteeing the full and faithful performance of all obligations of Tenant under the Lease.

5. Miscellaneous.

a. Entire Agreement. This Agreement represents the entire integrated agreement between the parties relating to the subject matter of this Agreement. The parties agree that there are no other agreements or understandings, written or oral, express or implied, tacit or otherwise in respect of the subject matter of this Agreement. This Agreement may be amended only in writing.

b. Attorneys Fees. If any action is threatened or commenced to interpret or enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs of suit from the other.

c. Fair Meaning. This Agreement shall be interpreted according to its fair meaning and not for or against any party hereto or the drafter of the agreement. This Agreement has been negotiated between independent counsel separately representing each party to this Agreement.

d. Independent Representation. The parties hereto acknowledge that each has been represented by separate legal counsel of their own choice, and that no legal advice in respect of this Agreement has been rendered by the counsel of one party to the other party.

e. Cooperation. The parties hereto agree to cooperate with each other to the extent necessary to effect the purposes of this Agreement, including without limitation executing additional documents, providing introductions to other persons and providing copies of books and records.

f. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed by facsimile signatures which shall be deemed original signatures for all purposes.

g. Successors and Assigns. This Agreement shall bind the successors, assigns, heirs, administrators and executrixes of each party hereto.

h. Choice; of Law and Forum. This Agreement and any controversy or dispute hereunder shall be governed by the internal laws of the State of California but without regard to the provisions thereof that relate to conflict of laws. The parties agree that the sole forum and venue for any legal or equitable proceeding relating to this Agreement shall be the County of Los Angeles, California.

"LANDLORD"

Downtown Properties, LLC,
a California limited liability company

By: Mas Asset Management Corporation,
Its managing agent

By: /s/ WILLY K. MA

Name: Willy K. Ma

Title: President

"TENANT"

Pihana Pacific, Inc.,
a Delaware corporation

By: /s/ BRETT LAY

Name: Brett Lay

Title: CFO

By: /s/ JOHN FREEMAN

Name: John Freeman

Title: Vice President/General Counsel

EXHIBIT "A"

GUARANTY OF LEASE

Equinix, Inc, a Delaware corporation ("Guarantor"). As a material inducement to and in consideration of Downtown Properties, LLC, a California limited liability company ("Landlord") entering into that certain "Second Amendment to Lease" with Pihana Pacific, Inc., a Delaware corporation (formerly known as Pacific Internet Exchange Corporation) ("Tenant") regarding the property located at 818 West 7 th Street, Sixth and Eighth Floors, Los Angeles, California 90017 ("Premises"), Guarantor unconditionally guarantees and promises to and for the benefit of Landlord that Tenant shall perform the provisions of that certain "Lease" between Landlord and Tenant dated as of April 10, 2000 as amended by that certain "First Amendment to Lease" dated as of October 15, 2001 and as further amended by that certain "Second Amendment to Lease" dated as of December 30, 2002 (collectively, the "Lease") that Tenant is to perform.

If Guarantor is more than one person, Guarantor's obligations are joint and several and are independent of Tenant's obligations. A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Tenant, or all, or whether any other Guarantor or Tenant, or all, are joined in the action.

The provisions of the Lease may be changed by agreement between Landlord and Tenant at any time, or by course of conduct, without the consent of or notice to Guarantor, and this Guaranty shall guarantee the performance of the Lease as changed. An assignment of this Lease (as permitted by the Lease) shall not affect this Guaranty, nor shall this Guaranty be affected by Landlord's failure or delay to enforce any of its rights.

If Tenant defaults under the Lease, Landlord can proceed immediately against Guarantor or Tenant, or both, or Landlord can enforce against Guarantor or Tenant, or both, any rights that it has under the Lease, or pursuant to applicable laws. If the Lease terminates and Landlord has any rights it can enforce against Tenant after termination, Landlord can enforce those rights against Guarantor without giving previous notice to Tenant or Guarantor, or without making any demand on either of them.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty, and Guarantor waives the right to require Landlord to:

a) proceed against Tenant;

b) proceed against or exhaust any security that Landlord holds from Tenant; or

c) pursue any other remedy in Landlord's power.

Guarantor waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant or any other person or to pursue any other remedy before proceeding against Guarantor; (b) any right or defense that may arise by reason of the incapacity, lack of authority, death, or disability of Tenant or any other person; and (c) any right or defense

arising by reason of the absence, impairment, modification, limitation, destruction, or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor, or of the right of Guarantor to proceed against Tenant for reimbursement. Without in any manner limiting the generality of the foregoing, Guarantor waives the benefits of the provisions of sections 2809, 2810, 2819, 2845, 2849, and 2850 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction. In addition, Guarantor waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts that increase the risk to Guarantor, notices of nonperformance, and notices of acceptance of this Guaranty), and protests of each and every kind.

The liability of Guarantor and all rights, powers, and remedies of Landlord under this Guaranty and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative, and such rights, powers, and remedies shall be in addition to all rights, powers and remedies given to Landlord by law or in equity.

This Guaranty applies to, inures to the benefit of, and binds all parties to this Guaranty, their heirs, devisees, legatees, executors, administrators, representatives, successors, and assigns (including any purchaser at a judicial foreclosure or trustee's sale or a holder of a deed in lieu of foreclosure). This Guaranty may be assigned by Landlord voluntarily or by operation of law.

Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, arrangement of Tenant, or by any defense that Tenant may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor, and shall assign to Landlord all rights of Guarantor under these claims. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action that a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations under this Guaranty shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment of distribution. If Landlord receives anything other than cash, the same shall be held as collateral for amounts due under this Guaranty.

This Guaranty of Lease will continue unchanged by any bankruptcy, reorganization or insolvency of Tenant or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Tenant. The bankruptcy, reorganization or insolvency of one or

more of the undersigned or a default hereunder by one or more of the undersigned shall not affect the obligations of the other undersigned party or parties under this Guaranty. Each of the undersigned hereby waives notice of any demand by Landlord as well as any notice of nonpayment of rent or other default under the Lease by Tenant. If notice is given to any of the undersigned, it shall constitute notice to each of the undersigned.

Guarantor waives the right to a jury trial of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, or other hearing brought by either Landlord against Tenant or Guarantor or by Tenant or Guarantor against Landlord on any matter arising out of, or in any way connected with, the Lease, this Guaranty, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statue, or regulation, emergency or otherwise, now or hereafter in effect.

As a further material part of the consideration to Landlord to enter into the Lease with Tenant, (a) Guarantor agrees that the law of the State of California shall govern all questions with respect to the interpretation or enforcement of the Guaranty; (b) Guarantor agrees that any suit, action, or proceeding arising directly or indirectly from the Guaranty, the Lease, or the subject matter of either shall be litigated only in courts located within the county and state in which the Premises are located; (c) Guarantor irrevocably consents to the exclusive jurisdiction of any local, state, or federal court located within the county and state in which the Premises are located; and (d) without limiting the generality of the foregoing, Guarantor waives and agrees not to assert by way of motion, defense, or otherwise in any suit, action, or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper.

If Landlord incurs costs or attorneys' fees in connection with any legal proceeding involving the enforcement or interpretation of the rights or obligations of the undersigned under this Guaranty of Lease, or to enforce any provisions under the Lease against Tenant or Guarantor, including Landlord's instituting an unlawful detainer action to obtain possession of the Premises (collectively, the "Enforcement Fees"), Guarantor agrees to pay Landlord's costs and reasonable attorneys' fees if Landlord prevails in such proceeding, regardless of whether such proceeding is prosecuted to judgment.

This Guaranty shall constitute the entire agreement between Landlord and Guarantor with respect to the subject matter of this Guaranty and supersedes all prior agreements, understanding, negotiations, representations, and discussions, whether verbal or written, of the parties, pertaining to that subject matter. Guarantor is not relying on any representations, warranties, or inducements from Landlord that are not expressly stated in this Guaranty.

If any provision of this Guaranty is determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions of this Guaranty, nor shall any

single or partial exercise of any right, power, or privilege preclude any other or further such exercise or the exercise of any other right, power, or privilege.

Time is strictly of the essence under this Guaranty and any amendment, modification or revision of this Guaranty.

If Guarantor is a corporation, limited liability company, partnership, or other entity, each individual executing this Guaranty on behalf of such corporation, limited liability company, partnership, or other entity represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of such corporation, limited liability company, partnership, or other entity in accordance with the governing documents of such corporation, limited liability company, partnership, or other entity, and that this Guaranty is binding upon such corporation, limited liability company, partnership, or other entity in accordance with its terms. If Guarantor is a corporation, limited liability company, partnership, or other entity, Landlord, at its option, may require Guarantor to, concurrently with the execution this Guaranty, to deliver to Landlord a certified copy of a resolution of the board of directors of such corporation, or other authorizing documentation for such entity authorizing or ratifying the execution of this Guaranty.

If either party to this Guaranty participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the other party reasonable attorney fees, collection costs, and other costs incurred in, and in preparation for, the action, arbitration, or mediation.

Guarantor's execution and delivery of this Guaranty shall not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease loan, credit agreement, partnership agreement, or other contract or instrument to which Guarantor is a party or by which Guarantor may be bound.

If Guarantor is more than one (1) person, the obligations of the persons comprising Guarantor shall be, joint and several and the unenforceability of this Guaranty or Landlord's election not to enforce this Guaranty against one (1) or more of the persons comprising Guarantor shall not affect the obligations of the remaining persons comprising Guarantor or the enforceability of this Guaranty against such remaining persons.

Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Guaranty.

Executed on this __ day of December, 2002.

"LANDLORD"

Downtown Properties, LLC,
a California limited liability company

By: Mas Asset Management Corporation,
Its managing agent

By: /s/ WILLY K. MA

Name: Willy K. Ma

Title: President

"GUARANTOR"

Equinix, Inc.,
A Delaware corporation

By: /s/ RENEE F. LANAM

Name: Renee F. Lanam

Title: CFO

Exhibit 10.70

Dated the 10th day of November 2000

COMFORT DEVELOPMENT LIMITED

and

PIXC HONG KONG LIMITED

LEASE

of

GLOBAL GATEWAY (HONG KONG)

JOHNSON STOKES & MASTER,
SOLICITORS, & C.,
HONG KONG.

MMBL/6505428/9/JKYF/D94C/sc

REGISTERED in the Tsuen Wan
New Territories Land Registry
by Memorial No. 1383037
on 7 December 2000

for Land Registrar

THIS LEASE is made as of the 10th day of November, 2000

BETWEEN

1. Comfort Development Limited whose registered office is situate at 29th Floor, Dah Sing Financial Centre, 108 Gloucester Road, Hong Kong (hereinafter called "Landlord"); and

2. PIXC Hong Kong Limited, a corporation whose registered office is situate at Room 2001 Central Plaza, 18 Harbour Road, Wanchai, Hong Kong (hereinafter called "Tenant").

SUMMARY OF LEAST TERMS ("Summary")

A. Addresses:

(1) Premises:

All Those Units 1, 2 and 3 of the 17th Floor of the building known at the date hereof as Global Gateway (Hong Kong), No.168 Yeung Uk Road, Tsuen Wan, New Territories ("the Building") as shown and coloured Pink on the 17th Floor Plan in Exhibit A attached hereto.

(2) Tenant's Notice Address:

Facility Manager
PIXC Hong Kong Limited
Units 1, 2 and 3, 17/F.,
Global Gateway (Hong Kong)
168 Yeung Uk Road
Tsuen Wan, New Territories
Hong Kong
Fax #

with a copy to

Chief Financial Officer
Pihana Pacific, Inc.

c/o PIXC Hong Kong Limited
1901-2, 19/F., Li Po Chun Chambers
189 Des Voeux Road Central
Hong Kong
Fax # (852) 2970-5882

(3) Landlord's Notice Address: 29th Floor, Dah Sing Financial Centre, 108 Gloucester Road, Hong Kong

(4) Landlord's Address for Rent Payments:
29th Floor, Dah Sing Financial Centre, 108 Gloucester Road, Hong Kong

B. Approximate area of the Premises:

Gross floor area of approximately 44,942 square feet for Units 1, 2 and 3 on 17th Floor of the Building.

C. Lease Term: Ten (10) years.

D. Commencement Date: 10 November, 2000

E. Schedule of Monthly Base Rents:

The following schedule of monthly Base Rents shall apply during the term of the Lease:

Months 1 to 6	HK$0.00 per month
Month 7	HK$353,313.50 per month
Months 8 to 12	HK$651,054.21 per month
Months 13 to 24	HK$668,918.66 per month
Months 25 to 36	HK$631,746.32 per month
Months 37 to 48	HK$650,698.71 per month
Months 49 to 60	HK$670,219.67 per month
Months 61 to 72	HK$690,326.26 per month
Months 73 to 84	HK$711,036.05 per month
Months 85 to 96	HK$732,367.13 per month
Months 97 to 108	HK$754,338.15 per month
Months 109 to 120	HK$776,968.29 per month

An installment of rent in the sum of Hong Kong Dollars Six Hundred Fifty-One Thousand Fifty-Four Dollars and Cents Twenty-One which is one (1) full month's unabated Base Rent, shall be delivered to Landlord concurrently with Tenant's execution of this Lease and shall be applied against the Basic Rent first due hereunder. In the event of any default by Tenant under this Lease which is not cured within the period stipulated in this Lease, Tenant shall be obligated to pay to Landlord, without any further notice from Landlord, a sum equal to all rental abatement granted to Tenant pursuant to Item M below, and no further rental abatement shall be granted for the balance of the Lease Term.

F.	Management Charges:	Hong Kong Dollars One Dollar and eighty cents (HK$1.80) per square foot per month subject to review by Landlord from time to time.
G.	Security Deposits:	
	(1) Cash Deposit:	Hong Kong Dollars Five Hundred Fifty-Five Thousand Two Hundred and Two Dollars and Twenty Five Cents (HK$555,202.25) as is further described in Section 6 herein;
	(2) Letter of Credit:	a Letter of Credit in the sum of Hong Kong Dollars Five Hundred Fifty-Five Thousand Two Hundred and Two Dollars and Twenty Five Cents (HK$555,202.25) as further described in Section 6 herein;
	(3) Decoration Deposit:	Hong Kong Dollars Three Hundred Thousand (HK$300,000.00) as is further described in Section 29 herein.
H.	Permitted Use:	For installation, operation and maintenance of equipment in connection with Tenant's telecommunications switching equipment, Internet, Internet co-location, Internet data center business and related activities provided that any ancillary office usage shall not exceed 30% of the usable floor area (as defined in the Government Lease) of the Premises.
I.	Tenant's Parking Allotment:	Landlord shall use its best endeavours to enable Tenant to have the use of four (4) car parking spaces whenever available on Ground Floor, Car Park 1 or Car Park 2 of the Building at the Building's then prevailing rate as adjusted during the Lease Term from time to time by Landlord or the operator of the parking facility serving the Building, on an "as available" basis. Such parking location shall be at such location as Landlord shall designate. For the avoidance of doubt, nothing herein shall create legal obligation between Landlord and Tenant in respect of the use of any carparking spaces unless and until Landlord obtains the right to lease such car parking spaces to Tenant, following which the terms of the Parking Space Rider shall apply.
J.	Landlord's Brokers:	CB Richard Ellis

K. Riders:

The following exhibits, riders and addenda are attached to and are part of this Lease:

Exhibit A - Floor Plans of Premises
Exhibit B - Rules and Regulations
Exhibit C - Tenant's Work Letter
Exhibit D - Plans showing Roof Space and Flat Roof Space
Exhibit E - Diagram showing the location of transformers
Exhibit F - Diagrams showing (1) Electrical Risers, (2) Riser Access at Lift 5 and Electrical Risers and (3) Chiller Risers
Backup Power Generator Rider (with Exhibit 1 attached)
Telecommunications Conduit Rider (with Exhibit 2 attached)
Extension Option Rider
Parking Space Rider
Guarantee Rider

L.	Guarantee:	Guarantee to be given by PIHANA PACIFIC INC. (formerly known as ixPedite Communications, Inc.) in favour of Landlord in the form as shown in the Guarantee Rider to guarantee the performance and obligations of Tenant under this Lease.
M.	Rent Abatement Period:	So long as Tenant is not then in default of this Lease and Tenant has not received three (3) or more notices of events of default, Landlord shall waive Tenant's Monthly Base Rent in months One (1), Two (2), Three (3), and the second half of month Seven (7) of the initial Lease Term hereof, for a total of Three and one half (3 and 1/2) months of rental abatement, which if not abated would be at the rate of HK$595,481.50 per month. The sum of HK$1,000,308.75 representing the agreed Monthly Base Rent for months Four (4) through Six (6) shall be deferred and paid over months Seven (7) through Twenty-Four (24) at the rate of HK$55,572.71 per month.
N.	a) Tenant's Construction Representative: Name: Mr. John Mansfield Telephone: (65) 538.2788 or (852) 2970.7788 b) Landlord's Construction Representative: Name: Mr. Eric Au Telephone: (852) 2526 6069	

AGREEMENT

1. PREMISES.

In consideration of the rent and Tenant's agreements hereinafter reserved and contained, Landlord hereby leases the Premises to Tenant and Tenant hereby leases and takes the Premises from Landlord EXCEPT AND RESERVING unto Landlord the rights set forth in Section 24. The Premises are located at the address set forth in Section A(1) of Summary containing approximately the gross floor area as set forth in Section B of Summary and are more particularly shown on the Floor Plans and coloured Pink thereon as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. Landlord however reserves the right, with Tenant's prior written consent which shall not be unreasonably withheld or delayed, to make minor changes to the area and to the configuration of the Premises (if necessary). The Premises are let on an "as is" basis and any discrepancy in the gross floor area as described above shall not be a ground for Tenant terminating this Lease or seeking damages or compensation against Landlord. The building in which the Premises are located is referred to herein as the "Building." The gross floor area of the Premises referenced above shall be deemed correct and is conclusive as between the parties.

2. TERM.

2.1 The term of this Lease shall commence on the "Commencement Date" indicated in Section D of Summary and shall extend for the period set forth in Section C of Summary.

2.2 In the event that Tenant is permitted and enters into exclusive possession of the Premises prior to the Commencement Date, such possession shall be deemed to be pursuant to, and shall be governed by the terms, covenants and conditions of this Lease, including without limitation, the covenant to pay rent, as though the Commencement Date occurred upon the date of taking possession by Tenant.

3. RENT.

3.1 Beginning on the Commencement Date (subject to adjustment pursuant to Section 2 above), the Base Rent (excluding Management Charges, rates, government rent and other outgoings) ("Base Rent") for the Premises shall be in accordance with the Schedule of Monthly Base Rents set forth in Section E of Summary. For the avoidance of doubt, property tax and other payments of a capital or non-recurring nature (unless already assimilated as part of the Management Charges mentioned in Section 4.1) shall be Landlord's sole responsibility.

3.2 Each installment of Base Rent set forth in Section E of Summary shall be payable in advance on the first day of each and every month throughout the term of this Lease and such payment shall be made by direct crediting (via wire transfer or other means) to the bank accounts as specified by Landlord from time to time.

3.3 Except for abatement of rental obligations contemplated by Section 11.1 or abatement of rental obligations due to failure of Landlord to provide electrical supply to the Premises pursuant to Section 9.2(b), Tenant agrees to pay all rent, without setoff, demand or deduction of any kind, to Landlord.

4. MANAGEMENT AND OTHER CHARGES.

4.1 Tenant shall pay, as monthly rent hereunder, in addition to the Base Rent, by way of further or additional rent monthly and proportionately for any part of a month a fair proportion (based on a proportion, the numerator of which is the gross lettable floor area of the Premises and the denominator of which is the total gross lettable floor area of the portion of the Building owned by Landlord, as may be reasonably determined by Landlord) of the aggregate of the costs, expenses, outgoings and other expenditure for the provision, operation and maintenance of all services provided and actually incurred by Landlord (including but not limited to any management fee charged by the manager of the Building under the Deed of Mutual Covenant) in connection with the Premises and the Building (such further or additional rent is referred to herein as the "Management Charges"). The Management Charges shall be subject to increase and review not more than four (4) times annually upon Landlord giving to Tenant fourteen (14) days prior notice in writing of such increase accompanied by a memorandum explaining the increase and upon the expiration of the notice period, the Management Charges, which initially shall be at the rate as set out in Section F of Summary, shall be increased by the amount specified in Landlord's notice.

4.2 Tenant shall pay and discharge all rates, government rent (except as provided in Section 9.8), government rates, taxes, assessments, duties, impositions, charges and outgoings of an annual or recurring nature now or hereafter to be imposed or levied on the Premises or upon the owner (based on a proportion, the numerator of which is the gross lettable floor area of the Premises and the denominator of which is the total gross lettable floor area of the portion of the Building owned Landlord, as may be reasonably determined by Landlord) or occupier in respect thereof by the Government of the HKSAR or other lawful authority (any increase in the amount of government rent, land premium or waiver fees, as provided in Section 9.8, and other payments of a capital or non-recurring nature excepted (unless already assimilated as part of the Management Charges mentioned in Section 4.1)).

4.3 Tenant shall also pay and discharge all deposits and charges in respect of water, electricity and telephone as may be shown by or operated from Tenant's own metered supplies or by accounts rendered to Tenant by the appropriate utility companies in respect of all such utilities consumed on or in the Premises.

5. OTHER TAXES.

Tenant shall pay and reimburse Landlord, as additional rent hereunder, upon demand and in such manner and at such times as Landlord shall direct from time to time by written notice to Tenant, any excise, sales tax, valued added tax (or any tax of a similar nature), privilege or other tax, assessment or other charge (other than taxes levied on net income of Landlord or franchise taxes) imposed, assessed or levied by any governmental authority chargeable in respect of any payment made by Tenant under or in connection with this Lease or paid by Landlord on any

payment made by Landlord where Tenant agrees in this Lease to reimburse Landlord for such payment.

6. SECURITY DEPOSIT.

A cash deposit (the "Cash Deposit") and an irrevocable standby letter of credit (an "L/C", and collectively with the Cash Deposit, the "Security Deposit") in the amounts set forth in Section G(1) and (2) of Summary shall be delivered by Tenant to Landlord upon execution of this Lease and shall be held by Landlord without liability for interest and as security for the due performance and observance by Tenant of Tenant's agreements, covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rent or a measure of Landlord's damages in case of default by Tenant. The L/C shall be issued by a reputable financial institution in the Hong Kong SAR acceptable to Landlord and shall be drawable by Landlord upon written demand on sight, delivered by Landlord to such financial institution, stating that a material default (as determined by Landlord in its reasonable opinion) has occurred hereunder as a result of which Tenant is indebted to Landlord for rent, or Management Charges or other charges, or any costs, loss, damage, injury, or expense caused by such material default, and specifying the amount thereof. Upon the occurrence of any breach or default under this Lease by Tenant, Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit or any reasonable portion thereof (against receipt) to the extent necessary to make good any arrears of rent, Management Charges and other charges payable hereunder or any costs, loss, damages, injury, or expense caused to Landlord by such breach or default. Landlord shall first use all of the Cash Deposit and thereafter may draw upon the L/C, in each case as may be permitted by the terms of the preceding sentence. At all times prior to the expiry of the term of this Lease, or any early determination of this Lease, and following any drawing under the L/C, Tenant shall promptly cause the replacement of the L/C with a fresh L/C in the full amount set forth in Section G (2) of Summary. Following any application of the Cash Deposit, Tenant shall pay to Landlord on demand an amount to restore the Cash Deposit to its original amount. In the event of bankruptcy or other debtor relief proceedings by or against Tenant (subject to applicable law in the Hong Kong SAR), the Security Deposit shall be deemed to be applied first, to the payment of rent and other charges due to Landlord, in the order that such rent or charges became due and owing, for all periods prior to filing of such proceedings. For the avoidance of doubt, if the Security Deposit is applied or deemed applied pursuant to the foregoing sentence, the Cash Deposit shall be applied or deemed applied first, and then the L/C shall be drawn or deemed drawn. Landlord shall keep the Security Deposit in accordance with the laws of the Government of the HKSAR. Upon termination of this Lease any remaining portion of the Security Deposit, being the balance of the Cash Deposit (if any), and the L/C shall be returned by Landlord to Tenant without payment of interest on the Cash Deposit within (i) thirty (30) days after the expiration of or sooner determination of this Lease and delivery of vacant possession to the Landlord, subject to the provisions of Section 15 of this Lease, or (ii) settlement of the last outstanding claim by the Landlord against Tenant for arrears of rent and other charges (against receipt) and for any breach, non-observance or non-performance of any of the agreements, stipulations, terms and conditions herein contained and on the part of the Tenant to be observed or performed whichever shall be the later. Tenant shall, not less than sixty (60) days before the expiration date of any L/C provided to Landlord by Tenant under this Lease, procure either a renewal of the L/C or a fresh L/C, and in either case, on the same terms and conditions as the existing L/C or with

amendments reasonably acceptable to Landlord (a "Replacement L/C"). Notwithstanding anything contrary contained in this Lease, if the Replacement L/C shall not be received by Landlord thirty (30) days prior to the expiry of the existing L/C, Landlord shall be entitled to draw on the existing L/C and hold those funds as part of the Cash Deposit. At any time thereafter Tenant may provide a Replacement L/C and Landlord will, in exchange, transfer to Tenant the proceeds from the original L/C (without being liable for any interest thereon).

7. LATE PAYMENTS.

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent, except in circumstances where abatement of rent is contemplated pursuant to Section 3.3. Tenant acknowledges that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, Landlord's financing charges. Therefore, if any monthly installment of rent is not received by Landlord within ten (10) days of the date when due, or if Tenant fails to pay any other sum of money due hereunder payable for ten (10) days after the same shall become payable (whether formally demanded or not), Tenant shall pay to Landlord on demand, as additional rent, daily interest on all such sums outstanding at the monthly rate of 1 % calculated from the date on which the same shall be due for payment until the date of payment as liquidated damages and not as penalty. Landlord's acceptance of any late charge, or interest pursuant to Section 32.9, shall not be, nor constituted a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies (including but without prejudice to the generality of the foregoing the right of re-entry) available to Landlord and exercisable under this Lease or any law now or hereafter in effect. Further, in the event such late charge is imposed by Landlord for three (3) consecutive months for whatever reason, Landlord shall have the option to require that, beginning with the first payment of rent due following the imposition of the third consecutive late charge, rent shall no longer be paid in monthly installments but shall be payable three (3) months in advance.

8. USE OF PREMISES.

Tenant shall use the Premises only for the use described in Section H of Summary. Landlord however gives no warranty as to suitability or fitness of the Building or Premises for such use. Tenant shall be personally responsible for making his own independent inquiry and investigation in respect of any provisions or restrictions affecting the occupation, value, user or enjoyment thereof under any Ordinance or regulations. Tenant shall be entitled to terminate this Lease under this Section 8 upon notice to the Landlord only in the event that the use described in Section H of Summary is not permitted by the Government of the HKSAR as described below. If a notice is issued by the relevant government department to Tenant or Landlord or the occupiers prohibiting the use of the Premises as described in Section H of Summary ("Use Prohibition"), then,

(i) The party receiving the notice shall communicate to the other party its receipt of such notice within two (2) business days after becoming aware of such notice;

(ii) Landlord shall, upon being made aware of such notice, promptly apply to the Government of the HKSAR for a waiver of such Use Prohibition. Landlord shall pay waiver fees or land premiums or penalties for infringement of user as required by the Government of the HKSAR in connection therewith. During the period the Government of the HKSAR is considering Landlord's application for waiver, Tenant's right to terminate the Lease under this Section shall be suspended for so long as Tenant is not prohibited from or penalized for (other than by way of financial penalties, which penalties Landlord has agreed to bear in accordance with the preceding sentence) using the Premises for the Permitted Use, and Tenant is not required to cease its business activities, and

(iii) In the event that after making any such application, the Government of the HKSAR rejects, in writing Landlord's application for waiver, or if Landlord after consultation with Tenant considers that it is not commercially feasible (on the grounds of difficulty, delay or expense or any other reasonable ground) to remove the Use Prohibition or to comply with the requirements imposed by the Government, Landlord shall communicate to Tenant in writing that Tenant is entitled to exercise the right to terminate the Lease under this Section by reason of Use Prohibition.

Upon such notice given by the Tenant to the Landlord the Lease shall terminate on the last day of the current month in which the notice was served. Upon termination, the provisions of Sections 15.2 and 15.4 shall apply, and the Landlord shall immediately return the Cash Deposit and Letter of Credit to the Tenant and both parties shall be discharged from their obligations to each other and shall have no rights against the other party except for claims for breaches that occurred prior to the date of termination. The Tenant shall also be given reasonable time to remove its fittings, equipment and machinery subsequent to the date of such termination. Without the prior written consent of Landlord (and subject to provisions of law) any other use of the Premises is absolutely prohibited. Tenant shall not use or occupy the Premises in violation of any recorded covenants, conditions and restrictions affecting the Tenant's particular use of the Premises or land on which the Building is located nor of any law, ordinance, rule and regulation. Tenant shall not do or permit to be done anything, which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Building or property located therein and shall comply with all rules, orders, regulations and requirements of any applicable fire services department or other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord as additional rent for any additional premium charged for any insurance policy by reason of Tenant's failure to comply with the provisions of this Section 8. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises and shall keep the Premises in good and tenantable repair and appearance. Tenant shall not place a load upon the Premises exceeding the average pounds of live load per square foot of floor area specified for the Building

by Landlord's architect, with any partitions to be considered a part of the live load. Landlord reserves the right to prescribe the weight and position of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof. Tenant's business machines and mechanical equipment which cause vibration or noise that may be transmitted to the Building structure or to any other space in the Building shall be so installed, maintained and used by Tenant as to eliminate such vibration or noise. Tenant shall be responsible for the cost of all structural engineering required to determine structural load. In any event, unless specifically authorized herein, Tenant shall not prepare or serve, or authorize the preparation or service of, food or beverages in the Premises, except only the occasional preparation of coffee, tea, hot chocolate and other such common refreshments for Tenant and its employees. Tenant shall not conduct any auction, bankruptcy; close out or similar sale of thing or properties of any kind to take place in or about the Premises or the Building.

9. BUILDING SERVICES

9.1 Throughout the term of this Lease, subject to shortage and accidents beyond Landlord's reasonable control, Landlord shall where any of such obligations or responsibilities as hereinafter mentioned has been assumed by the manager or the management company under the Deed of Mutual Covenant (as hereinafter defined) use its best endeavours to procure the manager or the management company to repair and maintain all structural elements of the Building (including main electrical supply) of which the manager or the management company is under an obligation to repair and common areas and maintain the exterior of the Premises, including grounds, walks, drives and loading area, if any. Tenant shall reimburse Landlord upon demand, as additional rent hereunder, for the cost of any repairs or extraordinary maintenance necessitated by acts of Tenant or Tenant's employees, contractors, agents, licensees or invitees. Landlord shall not be responsible for the repair and maintenance of Tenant installed systems or improvements, including, but not limited to any heating or air conditioning system installed by Tenant.

9.2 Landlord shall provide Tenant with:

(a) Evidence reasonably satisfactory to Tenant of Landlord's ability to supply fuel continuously, which may include multiple refilling of fuel reservoir(s), to Tenant's backup power generator(s) to enable Tenant to continue to operate its business in the event of a failure of the electricity utility to supply electric power to the Premises provided that this only applies if such generators) are drawing on Landlord's supplied common fuel reservoir and provided that Landlord shall demonstrate its ability to supply at all times fuel to Tenant's backup generator and all other tenants who possess or rely upon such backup generators (and are drawing on the same reservoir) for a continuous period of not less than eight (8) hours ("Fuel Supply Ability"). Landlord shall also maintain and operate the common fuel reservoirs according to international telecommunications facility standards. Landlord shall be deemed to have demonstrated its Fuel Supply Ability if: (i) Landlord provides Tenant from time to time a copy of the valid fuel supply agreement entered into between Landlord and the fuel supplier as soon as the same is signed; and (ii) Landlord is not aware of any circumstances and/or Landlord has not received any notice that the said fuel supplier is about to commit a breach of its obligation under the said fuel supply contract such that the common fuel reservoir from which Tenant's backup generators and other backup generators will draw fuel will not have a sufficient

supply of fuel to permit continuous operation of all backup generators for at least 8 hours. Failure of Landlord to demonstrate its Fuel Supply Ability at any time shall constitute an event of default under this Lease as contemplated by Section 13.2 (subject to applicable cure periods provided therein); and

(b) Electrical current available for Tenant to connect to the Premises in the following amounts

(i) 0.75 MVA of electrical capacity on the Commencement Date;

(ii) 3 MVA of electrical capacity on or before the date which is five (5) months following the Commencement Date; and

(iii) 4 MVA of electrical capacity on or before the date which is twelve (12) months following the Commencement Date;

provided that all electricity consumption shall be for Tenant's account and also provided that if Landlord shall fail to provide (after exhaustion of a cure or grace period of thirty (30) days from the date when a written notice is served on Landlord requesting Landlord to make good default or failure) the electrical capacity required by paragraphs (ii) or (iii) above, the rent payable during any period that electrical capacity is not so provided within two months after the cure or grace period shall be abated by an amount equivalent to 100% of the Base Rent then payable each month from the due date for such increased capacity set out above until the date such increased capacity is actually made available to Tenant to connect to Premises. The electrical capacity referred to above will be made available to Tenant in a designated transformer room for Tenant's use (proposed to be on the Carpark Level One of the Building, such transformer room space is shown in the diagram in Exhibit E attached hereto). Initially, the said transformer room shall be equipped with three (3) transformers each of 1.5mVA supplied by the incumbent electrical power provider for the Building. Tenant, at its sole cost and expense, may petition the said power provider to upgrade and/or increase the electrical capacity of the transformers to 2.OmVA each. Landlord shall co-operate with Tenant to accomplish this upgrade, however, all costs shall be borne solely by Tenant. Tenant agrees that should the transformers be upgraded to 2.OmVA transformers, Tenant shall only use two of the three transformers in the room for primary power and the third transformer shall be a backup or standby transformer to be used only in the event of failure or maintenance shutdown of one of the primary transformers (i.e. no more than two of the three transformers shall ever operate or be "powered up" at the same time).

(c) Riser access for Tenant's own work at the shaft now occupied by Lift 5 of the Building (such proposed riser access within Lift 5 is shown on the diagrams in Exhibit F attached hereto) is to be made available by Landlord to Tenant on or before 15th February 2001. If Landlord fails to provide such riser access on or before 10th March 2001, the Base Rent payable shall be abated by an amount equivalent to 100% of the Base Rent then payable, calculated and allowed on a per diem basis, from 11th March 2001 until the date such riser access is actually made available to Tenant for its own work.

9.3 Subject to Tenant using its best endeavours to minimize the amount of space or area to be taken up by any of Tenant's air-conditioning plant, units, equipment, machine, conduits, riders, wires, pipes or drains which may be situated in any part of the Building whether or not Landlord has agreed to provide such space or area to Tenant at a charge or not, Tenant shall have the right to install in the Premises, at its expense, self-contained 24-hour heating, ventilating and air conditioning units as may be reasonably determined by Landlord to be necessary in order to maintain building air conditioning standards resulting from Tenant's use of the Premises, including its installation and operation of telecommunications and computer equipment or other special equipment or facilities placing a greater burden on the air conditioning system than that which the Building is designed for. Should Landlord install a central chilled water system, the Building's chilled water supply will be available to Tenant at Tenant's option as a back up source at such costs and in such amounts as may be separately agreed between Landlord and Tenant. The installation and use of such self-contained 24-hour heating, ventilating and air conditioning unit is subject to compliance with the other provisions of this Lease, including but not limited to obtaining Landlord's prior written consent to the plans and specifications for the work and electrical requirements of the units, such consent not to be unreasonably withheld or delayed. Tenant shall pay all costs of electricity for such units. At Landlord's election, the electrical requirements for such units, as well as all of Tenant's other electrical requirements, shall be separately metered to Tenant at Tenant's expense as described below. Tenant shall have the right to remove and/or cap off the existing HVAC systems servicing the Premises.

Landlord shall make available electric current to the Premises in amounts reasonably sufficient for normal business use, including operation of building standard lighting and operation of typewriters and standard fractional horsepower office machinery, all subject to the obligations of Tenant for payment of the costs of such electricity as provided herein. Landlord shall be deemed to have fulfilled the aforesaid obligation if Section 9.2 (b) (i) is fulfilled by the Landlord. Tenant agrees that, at all times during the term of this Lease, Tenant's use of electric current under any provision of this Lease shall never exceed the capacity of the feeders to the Building or the risers or wiring installation in the Building failing which Tenant shall indemnify and reimburse Landlord, as additional rent, all sums actually and directly incurred by Landlord in respect of the additional or over usage of electric current by Tenant. Any transformer or other special equipment required to connect Tenant's facilities to Landlord's electrical supply shall be provided and installed at Tenant's expense. Landlord may, at its election and at Tenant's sole cost and expense, separately meter at Tenant's expense the electrical usage of some or all of Tenant's equipment, facilities or Premises. Tenant shall pay the charges for all such separately metered electrical usage within 15 days after receipt of a billing therefor. Landlord shall not use its approval rights to arbitrarily or discriminatorily prevent Tenant's installation of and use of equipment customarily used in a telecommunications business, but Landlord may impose reasonable conditions on such installation and use, regarding such matters as the placement, venting, power sources, and structural requirements for such equipment.

Anything in this Section 9 notwithstanding, and subject to Tenant obtaining Landlord's prior written consent of the plans and specifications not to be unreasonably withheld and complying with Section 28 and the other provisions of this Lease, in lieu of Landlord providing any electric power to the Premises, Tenant may make arrangements to obtain such electric supply directly from the relevant government Department, at Tenant's own cost and expense.

Landlord makes no representations or warranties regarding such arrangements, but shall cooperate with Tenant and the relevant Government Department reasonably and in good faith in this regard. As part of such arrangement, Tenant is to contract with, and be billed directly by, the relevant Department for provision of water and power. Tenant agrees to pay such bills when due. Under such arrangement, Landlord will not install or maintain nor bill Tenant for such electric service or usage. The location of any new vault or transformer space required for this purpose is subject to Landlord's reasonable approval, as part of Landlord's prior written approval of the plans and specifications. Tenant shall be liable for all costs and expenses incurred in connection with such an arrangement including, but not limited to, costs of equipment, materials, construction, installations and hook-ups. Any extra maintenance charges or service calls attributable to the actions of Tenant (e.g., continual adjustments of the thermostats or the failure to keep window coverings closed as necessary) shall be payable by Tenant to Landlord upon demand, as additional rent hereunder.

9.4 Tenant shall provide its own janitorial services to the Premises subject to Landlord's prior written approval of the service provider in Landlord's sole and absolute discretion. Tenant shall submit to Landlord a list of proposed janitorial service providers, with references, upon commencement of this Lease for Landlord to approve or disapprove without undue delay. Only those service providers who have been approved by Landlord may perform janitorial services. Tenant shall keep all such portions of the Premises in a clean and orderly condition at Tenant's sole cost and expense. In the event that Tenant shall fail to keep or cause to keep such portions of the Premises in a clean and orderly condition, Landlord may do so and any reasonable costs incurred by Landlord in connection therewith shall be payable by Tenant to Landlord upon demand, as additional rent hereunder. Tenant shall also pay to Landlord, as additional rent hereunder, amounts equal to any increase in cost of janitor service in and about the common areas if such increase in costs is due to (a) use of the Premises by Tenant during hours other than normal business hours, or (b) location in or about the Premises of any fixtures, improvements, materials or finish items (including without limitation wall coverings and floor coverings) other than those which are of the standard type adopted by Landlord for the Building.

9.5 Landlord shall furnish passenger elevator or lift service in common with Tenant and other tenants of the Building Monday through Friday from 8:00 A.M. to 6:00 P.M. and Saturday from 8:00 A.M. to 1:00 P.M. ("normal business hours"). Landlord shall provide passenger elevator service outside normal business hours to authorised personnel of Tenant and if a card reader system is installed by Landlord, Landlord shall issue such cards to Tenant's authorised personnel. Tenant shall not permit or suffer to be loaded into any cargo lift or passenger lift in the Building a weight greater than such lift is designed or permitted to carry.

9.6 Landlord hereby acknowledges and agrees that from and after the Commencement Date Tenant shall be granted access to the Premises on a twenty four (24) hours a day, seven days a week basis, without interruption from Landlord.

9.7 Landlord does not warrant that any service will be free from interruptions caused by repairs, renewals, improvements, changes of service, alterations, strikes, lockouts, labor controversies, accidents, inability to obtain fuel, steam, water or supplies or other cause. Landlord shall give Tenant prompt prior written notice of any extended interruptions of which Landlord has prior knowledge. No interruption of service shall be deemed an eviction or

disturbance of Tenant's use and possession of the Premises or any part thereof, nor relieve Tenant from payment of rent or performance of Tenant's other obligations under this Lease except as provided below in this Section 9.7. Landlord shall not be responsible for correcting any such interruption in service which is not curable by Landlord on a basis reflecting leading industry standards in Hong Kong, SAR. Subject to Section 11 below, and subject to Landlord's rights to recover certain costs under other provisions of this Lease, Landlord shall make good faith efforts to correct the interruption within a reasonable time after Landlord receives written notice from Tenant of the interruption in service. In doing such work Landlord shall use commercially reasonable, good faith efforts to interfere as little as reasonably practicable with the conduct of Tenant's business in the Premises, without, however, being obligated to incur liability for overtime or other premium payment to its agents, employees or contractors in connection therewith. Landlord shall not be liable for any injury to or interference with Tenant's business or any punitive, incidental or consequential damages, whether foreseeable or not, arising from the making of or failure to make any repairs, alterations or improvements, or provision of or failure to provide or restore any service in or to any portion of the Building, including the Premises, or the fixtures, appurtenances and equipment therein. Tenant shall not be entitled to any abatement or reduction of rent or other remedy by reason of Landlord's failure to furnish any of the services or Building systems called for by this Lease (other than electrical supply under Section 9.2(b) or Fuel Supply Ability and after exhaustion of all applicable cure or grace period) if such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or any other cause, except due to Landlord's wilful action, gross negligence or wilful misconduct or that of its employees, contractors, or agents.

9.8 Landlord shall pay all Property Tax, increases in the amount of government rent (in excess of the amount of government rent paid by Landlord to the Government of the HKSAR based on the assessment level of Building when the Government of the HKSAR first assesses the Building), land premiums or waiver fees imposed by the Government of the HKSAR subsequent to the date of this Lease as a direct result of Tenant's use of the Premises in accordance with the Permitted Use mentioned in Section H of Summary, and other payments of a capital or non-recurring nature in relation to the Premises as provided in Section 4.2.

10. CONDITION OF PREMISES.

By occupying the Premises, Tenant shall be deemed to accept the same and acknowledge that they comply fully with Landlord's covenants and obligations hereunder, subject to completion of any items which it is Landlord's responsibility hereunder to furnish and which are listed by Landlord and Tenant upon inspection of the Premises prior to the Commencement Date. Tenant acknowledges that neither Landlord nor any agent, employee or representative of Landlord has made any representation or warranty with respect to any matter, including but not limited to any matter regarding the Building or Premises, the applicable user or zoning or the effect of other applicable laws, or the suitability or fitness of the Building or Premises for the conduct of Tenant's business or any other purpose. Tenant is relying solely on its own investigations with respect to all such matters. During the term of this Lease, Tenant shall maintain the Premises in good condition, ordinary wear and tear, inherent defects and repairs which are specifically made the responsibility of Landlord hereunder excepted, and shall repair

all damage or injury to the Building or to fixtures, appurtenances and equipment of the Building caused by Tenant's installation or removal of its property or resulting from the negligence or tortuous conduct of Tenant, its employees, contractors, agents, licensees and invitees. In the event of failure by Tenant to perform its covenants of maintenance and repair hereunder, Landlord may perform such maintenance and repair, and any reasonable amounts expended by Landlord in connection therewith shall be payable by Tenant to Landlord upon demand, as additional rent hereunder.

11. DAMAGE TO PREMISES OR BUILDING.

11.1 In the event that the Building should at any time during the Lease Term be totally destroyed by fire or other casualty, this Lease shall terminate as of the date of such casualty. If the Building is damaged but not totally destroyed by the casualty or if there is an interruption in services or utilities provided by Landlord pursuant to Section 9.7 of this Lease, and, in the commercially reasonable opinion of the Landlord and Tenant, such damage or interruption in services or utilities prevents Tenant's beneficial use of all or a substantial portion of the Premises, or prevents reasonable access to the Premises, then Tenant shall notify Landlord in writing, within thirty (30) days after the date Tenant's beneficial use is so prevented. Landlord shall then state whether it intends to restore the Building or part thereof or the services or utilities in question and of how long, in Landlord's opinion, the restoration will take to complete. In the event that the repairs and restoration can, in Landlord's reasonable opinion, be completed within one hundred and eighty (180) days after the date Tenant's beneficial use is so prevented, and Landlord will receive insurance proceeds sufficient to cover the costs of such repairs and restoration, Landlord shall restore the Building or part therefor the services or utilities in question. In the event the Premises or a substantial portion of the Building or reasonable access to the Premises or the delivery system for Building services or utilities should be so damaged or destroyed that restoration or repairs cannot, in Landlord's reasonable opinion (and after consultation with Tenant), be completed within one hundred and eighty (180) days after the date Tenant's beneficial use is so prevented, Landlord may at its option terminate this Lease upon notice to Tenant. Similarly, in the event Landlord's notice notifies Tenant that the restoration in Landlord's opinion will not be completed within one hundred and eighty (180) days after the date Tenant's beneficial use is so prevented, Tenant shall have thirty (30) days from the date of Tenant's receipt of Landlord's notice to elect to terminate this Lease by delivering written notice of such termination to Landlord. If either Landlord or Tenant terminates this Lease as provided above, such termination shall be effective immediately upon the other party's receipt of the notice of termination. In the event that Landlord is obligated or elects to restore the Building or part thereof or the services or utilities in question, Landlord shall commence such work reasonably promptly and shall proceed with reasonable diligence to restore the Building or part thereof or the services or utilities to substantially the condition in which they were immediately prior to the casualty, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, alterations, decorations or other improvements which may have been constructed by or specifically for Tenant, or by or for other tenants within the Building.

If neither Landlord nor Tenant terminates this Lease due to the casualty, the Lease shall remain in full force and effect. After Landlord completes Landlord's restoration work on the Premises (i.e., any necessary repair work on the Building shell and the Building systems

originally provided by Landlord in the core of the Building), Tenant shall complete with reasonable diligence Tenant's repairs to its tenant improvements. The parties shall cooperate in performing their respective repairs simultaneously if, in the parties' reasonable opinion, that is feasible and appropriate. Tenant shall have the right to terminate this Lease upon notice served upon Landlord prior to actual completion of Landlord's restoration work on the Premises if such restoration work is not substantially completed within two hundred and seventy (270) days after the date Tenant's beneficial use is first prevented (provided, however, that if Landlord's original notice to Tenant estimated that the restoration work would take more than one hundred and eighty (180) days after the date Tenant's beneficial use is so prevented, and Tenant did not elect to terminate the Lease on that basis, then Tenant shall not be entitled to terminate the Lease pursuant to this sentence unless Landlord fails to substantially complete such restoration work within ninety (90) days after the estimated restoration period given in Landlord's original notice). For purposes of this Section, "substantial completion" of Landlord's work shall mean completion to such a degree that Tenant can commence in the Premises or the damaged portion thereof its own reconstruction of tenant improvements as contemplated by this Lease. "Substantial completion" shall not require full completion of all "punch list" type items which do not materially affect Tenant's use of the Premises. Lease termination, to the extent provided above, shall be Tenant's sole remedies. Notwithstanding the foregoing to the contrary, if the damage is due to the gross negligence or wilful misconduct of Tenant or any of Tenant's agents, employees or invitees, Tenant shall not be permitted to exercise its right of Lease termination, nor shall Tenant be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration related thereto.

11.2 Subject and without prejudice to Section 9.7, in the event that the Building is damaged but not totally destroyed by any act of casualty contemplated by Section 11.1 which prevents Tenant's beneficial use of all or substantial portion of the Premises for a continuous period of seven (7) days (and whether or not either party elects to terminate this Lease in accordance with the foregoing provisions of Section 11.1), the amount of rent payable for the Premises shall be abated proportionately by an amount to be agreed by Landlord and Tenant to reflect the area of the Premises which has been rendered unusable by Tenant. The period of any such abatement of rent shall commence on the month immediately following the month in which the relevant event of casualty occurs to the Building and/or the Premises.

11.3 In the event any holder of a mortgage or deed of trust on the Building should require that the insurance proceeds payable upon damage or destruction to the Building by fire or other casualty be used to retire the debt secured by such mortgage or deed of trust, or in the event any lessor under any underlying or ground lease should require that such proceeds be paid to such lessor, Landlord shall in no event have any obligation to rebuild, and at Landlord's election this Lease shall terminate.

11.4 With the exception of insurance required to be carried by Tenant under Section 27 of this Lease, any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Premises shall be for the sole benefit of the party carrying such insurance and under its sole control. Landlord shall not be required to carry insurance of any kind on Tenant's property and, except by reason of the breach by Landlord of any of its obligations hereunder, shall not be obligated to repair any damage thereto or to replace the same.

11.5 In addition to its termination rights in Section 11.1 above, Landlord shall have the right to terminate this Lease if any damage to the Building or Premises occurs during the last twelve (12) months of the Term of this Lease and Landlord estimates that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Lease Term, or (b) 60 days after the date of such casualty.

12. GOVERNMENT LEASE AND DEED OF MUTUAL COVENANT.

Tenant shall observe and comply with and perform all the covenants, terms and provisions in the Government Lease relating to the land on which the Building is now erected, (herein referred to as "Government Lease"), the Deed of Mutual Covenant and Management Agreement registered in the Tsuen Wan New Territories Land Registry by Memorial No. 1318892, and subject to the last sentence of this Section 12, any supplemental deeds of mutual covenant, deeds of covenant and grants, deeds of easement, licenses and rules and regulations entered or to be entered into from time to time by Landlord and other parties expressed to be binding upon the owner or occupier or any tenant of any portion of the Building as contemplated under Agreement registered in the Tsuen Wan New Territories Land Registry Memorial No. 1364412 (herein collectively referred to as "Deed of Mutual Covenant") to which this Lease is subject so far as they relate to the Premises and this Lease, and shall indemnify Landlord against the breach, non-observance or non-performance thereof directly by Tenant. Landlord represents to the Tenant that the rights granted to the Tenant under this Lease shall not be derogated by the Deed of Mutual Covenant.

13. DEFAULT.

13.1 The following events shall be deemed to be events of default by Tenant under this Lease:

(a) If Tenant shall fail to pay any installment of rent, Management Charges or any other sum required to be paid by Tenant under this Lease within ten (10) days of the date such payment shall fall due.

(b) If Tenant shall fail to comply with any material term, provision or covenant of this Lease, other than provisions pertaining to the payment of money which is not cured within thirty (30) days of written notice of such default being served on Tenant (and in respect of those breaches which cannot be remedied, adequate compensation is not tendered by the Tenant to the Landlord).

(c) If Tenant shall enter into any scheme of arrangement or assignment with its creditors.

(d) If any encumbrancers take possession of any of Tenant's assets located at the Premises.

(e) If Tenant shall file a petition under any section of the Bankruptcy Ordinance, or other similar Ordinance, as amended from time to time, pertaining to bankruptcy, insolvency or debtor relief, or Tenant shall have a petition or other proceedings filed against

Tenant under any such law or chapter thereof and such petition or proceeding shall not be vacated or set aside within thirty (30) days after such filing.

(f) If a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant and such receivership shall not be terminated and possession of such assets restored to Tenant within ninety (90) days after such appointment.

(g) If Tenant shall become bankrupt or being a corporation goes into liquidation (save for the purposes of amalgamation or reconstruction)

(h) If Tenant shall suffer execution to be levied upon Tenant's assets located at the Premises or otherwise on Tenant's goods, equipments etc. or if in such circumstances as aforesaid Tenant shall suspend or cease or threaten to suspend or cease to carry on its business.

(i) If Tenant shall assign this Lease or sublet the Premises in violation of the terms hereof.

(j) If Tenant ceases to carry on its business at the Premises for a period of thirty (30) consecutive days.

13.2 The following shall be deemed to be events of default by Landlord under this Lease:

(a) Landlord fails to comply with any of the material terms and covenants set forth in this Lease.

(b) Landlord fails to maintain Fuel Supply Ability as contemplated in Section 9.2(a) provided that such failure is not cured within thirty (30) days of written notice of same being served on Landlord. (For the avoidance of doubt, failure to provide electricity in the manner as contemplated in Section 9.2(b) and/or failure to provide riser access in the manner as contemplated in Section 9.2(c) after the respective applicable cure or grace period is a subject for abatement of rent only and in no case may Tenant terminate this Lease as a consequence thereof).

14. REMEDIES UPON DEFAULT.

14.1 Upon the occurrence and continuance of any event of default by Tenant (after exhaustion of all applicable cure or grace period) and in respect to those breaches which cannot be remedied adequate compensation is not tendered by Tenant to Landlord, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies (each and all of which shall be cumulative and non-exclusive) without any notice or demand whatsoever:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrears of rent or other charges, enter upon and take possession of the Premises and expel or remove Tenant and any other person who

may be occupying the Premises or any part thereof, without prejudice to any right of action by Landlord to claim against Tenant for any loss or damages sustained by Landlord and the Security Deposit shall be forfeited to Landlord to the extent of any actual loss or damages sustained by Landlord.

(b) A written notice served by Landlord thereby exercises the power of determination and/or re-entry hereinbefore contained shall be a full and sufficient exercise of such power without physical entry on the part of Landlord notwithstanding any statutory or common law provision to the contrary.

(c) Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and approved by Landlord and affecting the Premises.

(d) Landlord may at its option elect not to terminate this Lease but to deduct from the Security Deposit the amount of any costs, expenses, loss or damage sustained or incurred by Landlord as the result of the breach, non-observance or non-performance by Tenant. All costs and expenses including any reasonable legal costs and fees incurred by Landlord in demanding payment of the rent and other charges payable under this Lease or the extent of any loss to Landlord arising out of this paragraph and in exercising its rights and/or remedies or in attempting to do so shall be recoverable from Tenant as a debt or be deductible by Landlord from the Security Deposit.

14.2 Upon the occurrence and continuance of an event of default by Landlord (after exhaustion of all applicable cure or grace period), in respect to those breaches which cannot be remedied and adequate compensation is not tendered by Landlord to Tenant, Tenant shall have, in addition to any other remedies available to Tenant at law or at equity, the option to pursue the following remedy without any notice or demand whatsoever:

(a) Terminate this Lease, in which event Tenant shall remove such of its improvements as Landlord has designated pursuant to Sections 28.1 and 28.2 from the Premises and Landlord shall return the Security Deposit to Tenant (less any lawful deduction).

14.3 No waiver by Landlord or Tenant of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other or later violation or breach of the same or any other of the terms, provisions, and covenants herein contained. Forbearance in enforcement of one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. The acceptance of any rent hereunder by Landlord following the occurrence of any default, whether or not known to Landlord, shall not be deemed a waiver of any such default, except only a default in the payment of the rent so accepted, subject to the provisions of Section 32.1.

14.4 If this Lease shall be terminated for a breach by Tenant under this Section 14, Landlord shall not require Guarantor to accept a new tenancy agreement or lease of the Premises, and Guarantor shall pay to Landlord on demand an amount equal to the rents and other

moneys payable to Landlord under the Lease for the period commencing with the date of such disclaimer and ending on the date upon which the Premises are relet (if applicable) or (as the case may be) the expiry of the Term whichever is earlier, subject always to Landlord using its reasonable commercial efforts to re-lease the Premises and mitigate its losses.

15. SURRENDER OF PREMISES; REMOVAL OF PROPERTY.

15.1 No act or thing done by Landlord or any agent or employee of Landlord during the term hereof shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated.

15.2 Upon the expiration of the term of this Lease, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Section 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear, inherent defects and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

15.3 Whenever Landlord shall re-enter the Premises as provided in this Lease, any personal property of Tenant not removed by Tenant upon the expiration of the term of this Lease, or within forty-eight (48) hours after a termination by reason of Tenant's default as provided in this Lease, shall be deemed abandoned by Tenant and may be disposed of by Landlord according to law. Landlord shall be entitled to apply any proceeds of the sale of such items to any sums due to Landlord by Tenant and to Landlord's costs of removal, storage and sale of such items.

15.4 All fixtures, alterations, additions, repairs, improvements and/or appurtenances attached to or built into or on or about the Premises prior to or during the term hereof, whether by Landlord at its reasonable expense or at the expense of Tenant, or by Tenant at its expense, or by previous occupants of the Premises, shall be and remain part of the Premises and shall not be removed by Tenant at the end of the term of this Lease. Such fixtures, alterations, additions, repairs, improvements and/or appurtenances shall include, without limitation, built-in utilities such as heating, ventilating and air conditioning units, floor coverings, drapes, paneling, molding, doors, kitchen and dishwashing fixtures and equipment, plumbing systems, electrical systems, lighting systems, silencing equipment, all fixtures and outlets for the systems mentioned above and for all telephone, radio, telegraph and television

purposes, and any special flooring or ceiling installations, as well as standby power generators, fuel tanks (subject to the following paragraph) and electrical fuel gear, and condenser units (if any) installed pursuant to the terms of the Lease, wherever located in the Building (including its roof) (but excluding Tenant's telecommunications switch and other telecommunications trade fixtures and equipment, and batteries and rectifiers and all other equipment, machinery and fittings ancillary thereto, which Tenant agrees to remove upon the expiration or termination of this Lease). Notwithstanding the foregoing, Landlord may, in its sole discretion, require Tenant, at Tenant's sole cost and expense, to remove any fixtures, alterations, additions, repairs, improvements and/or appurtenances attached or built into or on or about the Premises or as otherwise listed above (specifically including telecommunications equipment, but excluding conduit and cable and initial tenant improvements). Tenant shall repair any damage to the Building and Premises occasioned by the installation, construction, operation and/or removal of any fixtures, trade fixtures, equipment, alterations, additions, repairs, improvements and/or appurtenances pursuant to this Section. If Tenant shall fail to complete such removal and repair such damage, Landlord may do so and may charge the reasonable cost thereof to Tenant.

15.5 Tenant hereby waives all claims for damages or other liability in connection with Landlord's re-entering and taking possession of the Premises or removing, retaining, storing or selling the property of Tenant as herein provided, and Tenant hereby indemnifies and holds Landlord harmless from any such damages or other liability, and no such re-entry shall be considered or construed to be a forcible entry.

16. DISTRAINT.

16.1 For the purposes of Part III of the Landlord and Tenant (Consolidation) Ordinance (Chapter 7) and of these presents, the rent payable in respect of the Premises shall be and be deemed to be in arrears if not paid in advance (or within the relevant cure periods) at the times and in the manner hereinbefore provided for payment thereof.

17. ASSIGNMENT AND SUBLETTING.

17.1 Tenant shall not assign or sublet all or any portion of the Premises except that Tenant may, on prior notice to Landlord, assign or sublet all or a portion of the Premises at any time during the term of the Lease to any corporation or entity which (i) is a wholly owned subsidiary of Tenant; (ii) is a corporation which Tenant owns (directly or indirectly) in excess of 51% of the issued and outstanding shares; or (iii) a majority of Tenant's assets are transferred to an affiliate; in each case without securing Landlord's written approval or consent, provided however that Tenant (a) remains liable for all obligations pursuant to the Lease and (b) such assignee, sublessee or transferee assumes the obligations of Tenant under the Lease by a document reasonably satisfactory to Landlord.

17.2 Except as provided in this Section 17, Tenant shall not sublet all or any part of the Premises, nor assign this Lease, without Landlord's express prior written consent, which consent shall not unreasonably be withheld provided that Tenant shall notify Landlord of its intention so to do and shall provide Landlord for its approval a draft of the proposed subtenancy agreement conforming to a standard form agreement provided by Landlord and particulars of:

(a) The name and address of the proposed sub-tenant;

(b) The business proposed to be carried on by the proposed sub-tenant at the portion of the Premises proposed to be sub-let;

(c) The portion of the Premises proposed to be sub-let accompanied by a plan showing the position and dimensions thereof which plan shall be annexed to the sub-tenancy agreement;

(d) The term of the proposed sub-letting; and

(e) The proposed rent and other charges to be paid by the proposed sub-tenant.

(For purposes of the balance of Sections 17.2 through 17.4, the term "sublease" shall be deemed to include any sub-tenancy agreement or any other agreements for use or occupancy of the Premises as described in the preceding sentence (but for the avoidance of doubt, shall not include co-location agreements). The terms "subtenant" and "sublet" shall be construed accordingly.)

In order to assist Landlord in evaluating any proposed sublease, Tenant agrees to provide Landlord with the proposed subtenant or assignee's current financial statement and financial statements for the preceding 2 years (if any) and such other information concerning the business background and financial condition of the proposed subtenant or assignee and of Tenant as Landlord may reasonably request.

Landlord and Tenant hereby agree that Landlord's disapproval of any proposed sublease hereunder shall be deemed reasonable if based upon any reasonable factor, including, without limitation, any or all of the following factors:

(a) The proposed subletting would result in more than three subleases of portions of the Premises being in effect at any time during the term;

(b) The rent payable by the proposed subtenant would be less than the fair market rental value for the space as determined pursuant to the last paragraph of this Section 17.2 (except as otherwise provided in Section 17.5);

(c) The proposed subtenant is an existing tenant or occupant of the Building or has negotiated with Landlord within the last twelve months for space in the Building or is another subtenant prohibited by the next to last paragraph of this Section 17.2;

(d) The proposed subtenant is a governmental entity;

(e) The transaction calls for new demising walls to be built, and the portion of the Premises proposed to be sublet or assigned has inadequate means of ingress and egress;

(f) The use of the Premises by the proposed subtenant (i) is not permitted by the use provisions of this Lease, or (ii) might, in Landlord's reasonable opinion, violate any right for an exclusive use granted by Landlord to another Tenant in the Building;

(g) The sublease would likely result, in Landlord's reasonable opinion, in a significant increase in the use of the parking areas or common areas of the Building due to the transferee's employees or visitors, and/or significant increase in the demand for utilities and services to be provided by Landlord to the Premises;

(h) The subtenant does not, in Landlord's reasonable opinion, have the financial capability to fulfill the obligations imposed by the sublease, or have income and net worth at least equal to that of Tenant;

(i) The subtenant is not, in Landlord's reasonable opinion, of reputable or good character or consistent with Landlord's desired tenant mix;

(j) The subtenant is a real estate developer or landlord or is acting directly or indirectly on behalf of a real estate developer or landlord;

(k) The proposed subtenant may, in Landlord's reasonable opinion, increase the chances of significant hazardous waste contamination within the Premises or the Building;

(l) In the reasonable judgment of Landlord, the purpose for which the subtenant intends to use the Premises is not in keeping with the reasonable standards of Landlord for the Building or is in violation of the terms of any other lease in the Building; or

(m) The term or duration of the sublease is granted for a period which would extend beyond the expiry date of the Lease Term.

Notwithstanding the foregoing, Tenant may, subject to the rest of the terms hereof, sublet all of the Premises or assign this Lease to any entity controlling, controlled by or under common control with Tenant, (including assignment or subletting to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern) provided that, with regard to each such assignment or subletting: (A) Landlord receives the financial statements prescribed above and such other financial and background information as Landlord may request regarding the assignee or subtenant at least twenty (20) days prior to such proposed assignment or sublease; (B) Landlord determines, in its reasonable discretion, that the income and net worth of the assignee or subtenant comply with the standards prescribed in item (h) above; (C) the use of the Premises is not altered; (D) Landlord determines, in its reasonable discretion, that the transaction is not being entered into as a subterfuge to avoid the restrictions on assignment and subletting in the Lease; and (E) the subtenant or assignee expressly assumes the obligations of Tenant hereunder as prescribed below in this Section 17.2.

Tenant may mortgage, assign, pledge or otherwise transfer the interest of Tenant in and to any sublease or the rentals payable thereunder or in the Security Deposit, subject however, to any interest the Landlord has under this Lease or at law in the Security Deposit.

Any sublease, assignment, mortgage, pledge, encumbrance, or transfer made in violation of this Section 17.2 shall be void and at Landlord's election shall terminate this Lease.

Each subtenant or assignee of Tenant, other than Landlord, shall assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent, and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease (provided that in the case of a sublease, the subtenant's obligations shall be limited to those obligations relating to the subleased space and the common areas during the sublease term). No sublease or assignment shall be deemed approved by Landlord unless such subtenant or assignee and Tenant shall deliver to Landlord a counterpart of such sublease or assignment and an instrument in a form acceptable to Landlord, which contains a covenant of assumption by the subtenant or assignee satisfactory in substance and form to Landlord, consistent with the requirements of this Section 17.2, but the failure or refusal of the subtenant or assignee to execute such instrument of assumption shall not release or discharge the subtenant or assignee from its liability as set forth above.

No subtenant or assignee not complying with the foregoing requirements shall have any interest in the Security Deposit. Any assignee that does comply with the foregoing requirements shall automatically succeed to Tenant's position with respect to the Security Deposit, and Landlord shall have the right to refund all or any portion of the Security Deposit to the assignee at any time or under any circumstances with no liability to the assignor.

Landlord may require that the assignee or subtenant remit directly to Landlord on a monthly basis, all monies due to Tenant by said assignee or subtenant. In such event Landlord shall apply the sums received to the obligations of Tenant and its successors under this Lease.

In the event of default by any assignee or subtenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor.

Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with the assignee or other successor of Tenant, and without obtaining Tenant's consent thereto, and any such actions shall not relieve Tenant of liability under this Lease.

Consent by Landlord to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

Tenant agrees that all advertising by Tenant to market the space in the Premises to be sublet or assigned shall require Landlord's prior written approval, which shall not be unreasonably withheld. Tenant further agrees that it shall not, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole discretion, market any space in the Premises, assign the lease or sublet any space in the Premises to existing tenants or occupants of the Building, or to any entity controlling, controlled by, or under common control with any existing tenant or occupant of the Building, except for any entity controlling, controlled by or under common control with Tenant.

Tenant agrees that it shall not sublet, nor assign, nor advertise as available for subletting or assignment, nor list with brokers for subletting or assignment, all or any portion of the Premises for a consideration which is equal to less than the fair market rental value, as determined by Landlord in its reasonable discretion, for comparable space in the Building for a comparable term commencing concurrently with the assignment or sublease term, with comparable rent credits and tenant improvement allowances. Within ten (10) days after Landlord receives any written request from Tenant for Landlord's estimate of the fair market rental value for specified space (which request shall identify the space in question, the proposed term and the proposed rent credits and improvement allowances), Landlord shall notify Tenant in writing of the fair market rental value for such space for a comparable term with comparable rent credits and tenant improvement allowances.

17.3 In the event that Tenant has sought and received Landlord's consent to assign this Lease, or to enter into a sublease as to all or any portion of the Premises, the monthly rent payable by Tenant to Landlord, pursuant to Section 3, shall be increased by fifty percent (50%) of the amount to be received by Tenant during each month pursuant to the terms of the assignment or sublease, in excess of Tenant's monthly rental payable to Landlord for the space subject to the assignment or sublease. The amounts referred to in the previous sentence include rent, additional rent, or any other payment in respect of use or occupancy, but shall not include Management Charges, government rents, taxes and those amounts referable to the reimbursement of costs of leasehold improvements installed by Tenant, which shall be valued by an independent third party mutually as may be agreed by Tenant and Landlord, and whether paid in a lump sum or periodic payments; provided however, such amounts shall not include any fees charged by Tenant to its Customers to the extent such fees are based on Tenant's services (not square footage of space used by the Customers) as provided under Section 17.5 herein. In no event shall the total sums payable to Landlord be less than the monthly rental Landlord would have received but for such assignment or sublease.

The additional rent shall be due and payable to Landlord in accordance with the schedule specified in the sublease or assignment instrument, and the failure of any subtenant or assignee to make any payments in accordance with that schedule shall not affect the obligation of Tenant to pay the additional rent to Landlord.

The calculation of the amount of rentable space being sublet shall be made by Landlord in accordance with its usual standards. Landlord may require acknowledgment by Tenant of Tenant's concurrence on Landlord's calculation of the amount of rentable space being sublet as a condition to Landlord's consent to any sublease.

The provisions of a sublease or assignment instrument consented to by Landlord cannot be modified, nor the sublease or assignment terminated, other than in accordance with its terms, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. The terms of this Section 17.3 shall apply to any subleasing or assignment by any subtenant or assignee.

17.4 Tenant shall pay to Landlord, promptly upon receipt of a billing from Landlord, the amount of Landlord's reasonable legal costs incurred in connection with

Landlord's review or approval of any sublease or assignment transaction requiring Landlord's consent hereunder.

17.5 Landlord acknowledges that Tenant is entitled to carry on any activities within the Premises contemplated by Section H of Summary and Section 8 hereof without the need for any approval, consent or waiver from Landlord. Furthermore, Landlord acknowledges that such activities require the presence in the Premises of certain communications equipment of customers of Tenant (collectively "Customers") in order that Tenant can provide services to Customers, including, without limitation, Internet co-location, switching and routing services, and Tenant shall not be obliged to seek Landlord's approval or consent in order to provide such services. Tenant will ensure that the Customers under the co-location agreements will not use or occupy space within the Premises that exceeds sixty-five percent (65%) of the total lettable area of the Premises. Prior to the date hereof Landlord has been provided with Tenant's standard form customer agreement, which is in form acceptable to Landlord. In the event material amendments are made to such standard form during the term of this Lease, Tenant will provide Landlord with a revised version thereof for the Landlord's information. Landlord shall keep the terms of this form customer agreement, as amended, confidential. The form shall: (a) conform to and be consistent with the provisions of this Lease; (b) shall state that this Lease is prior and shall remain in all respects prior and superior to the customer agreement and that the customer agreement does not modify this Lease; (c) state that Landlord is not joining in nor bound by any agreement, representation or warranty contained in the customer agreement, and (d) shall have attached a copy of the Building's then current rules and regulations to be given to Tenant's Customers. Any matter that requires Landlord's approval under this Lease shall continue to require such approval. Tenant's Customers shall obtain directly from Tenant any copies Tenant's Customer requires of the applicable terms of this Lease, and Landlord shall have no obligation in that regard. Upon any termination of this Lease, whether due to agreement, default or expiration of the term, Tenant's Customers shall immediately surrender possession of the Premises, including the equipment space, to Landlord. Tenant agrees to be liable to Landlord for any violation by Tenant's Customers of any provisions of this Lease. Landlord's advance consent in this Lease to these transactions is not a waiver of any of Landlord's rights under this Lease as to Tenant. Tenant shall, upon written request by Landlord, provide Landlord with copies of executed customer agreements to ensure compliance with the requirements of this Section 17.5, provided that Tenant shall be allowed to obscure the identity and unique commercial terms of an individual customer agreement not relevant to compliance with this Section 17.5 or other provisions of this Lease.

18. TRANSFER OF LANDLORD'S INTEREST.

In the event of any transfer of Landlord's interest in the Building or Premises, other than a transfer for the purpose of giving security for banking facilities or obtain financial support only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer, including, without limitation, the obligation of Landlord to return the Security Deposit as provided in this Lease; provided that the transferor shall, on the date of transfer of its interest in the Premises, transfer any Security Deposit then held by Landlord, or any portion thereof remaining after proper deductions therefrom, to the transferee and shall thereafter notify Tenant of such transfer, of any claims made against the Security Deposit, and of the transferee's name and address, by written notice

delivered personally (in which case Tenant shall acknowledge receipt of such notice by signing Landlord's copy of such notice) or by registered mail.

19. STAMP DUTY AND COSTS.

Each of the parties hereto shall bear its own legal costs in relation to the preparation, approval and execution of this Lease and its counterpart. The stamp duty of Lease and its counterpart and Land Registry registration fees (if any) shall be borne by Landlord and Tenant in equal shares.

20. NOTICES.

In every case when, under the provisions of this Lease, it shall be necessary or desirable for one party hereto to serve any notice, request or demand on the other, such notice or demand shall be in writing and shall be served personally or by fax to the applicable address for notice set forth in Section A(2) & (3) of Summary. Landlord or Tenant may, from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to whom all such notices or demands are thereafter to be addressed. Service of any such notice or demand if given personally shall be deemed completed upon delivery, and if made by mail shall be deemed to be given or completed at the time and date of posting.

21. QUIET ENJOYMENT.

Landlord covenants that Tenant, upon paying the rent and performing the covenants of this Lease on Tenant's part to be performed, shall and may peaceably and quietly have, hold and enjoy the Premises for the term of this Lease. Without interruption by Landlord or anyone lawfully claiming under or through or in trust for Landlord except for viewing as provided in Section 24.2.

22. TENANT'S FURTHER OBLIGATIONS.

22.1 Except for ordinary fair wear and tear, inherent defects and as otherwise provided in this Lease, Tenant shall, at Tenant's expense, keep in good order, condition and repair the interior of the Premises and shall promptly and adequately repair all damage to the interior of the Premises of a non-structural nature and replace or repair all glass, fixtures, equipment and appurtenances therein damaged or broken, except where such damage or breakage was caused by the act, omission or gross negligence of the Landlord, its employees, agents, contractors or invitees, under the supervision and with the approval of Landlord and, if Tenant does not do so, Landlord may, but need not, make such repairs and replacements. If Landlord does so, Tenant shall pay Landlord the cost thereof promptly upon demand, as additional rent hereunder.

22.2 Tenant shall comply with all laws, ordinances, rules, regulations, orders and directives of governmental and other competent authorities and shall obtain and keep in effect all licenses, permits (including but not limited to conditional use permits) and other authorizations required with respect to the business or businesses conducted by Tenant within or from the Premises or with respect to any special equipment or facilities of Tenant permitted under the other provisions of this Lease. Tenant and its employees, agents, licensees and invitees

shall also comply with all reasonable rules and regulations which Landlord may adopt from time to time for the protection and welfare of the Building and its tenants and occupants. The rules and regulations for the Building currently in force are attached hereto as Exhibit "B". Landlord shall have no liability to Tenant for the failure of any other tenants in the Building to observe the rules and regulations. The Landlord shall ensure that any rules and regulations do not derogate from the rights and privileges of the Tenant under this Lease.

22.3 Tenant shall not cause or produce or suffer or permit to be produced on or in the Premises any sound or noise (including sound produced by broadcasting from Television, Radio and any apparatus machine or instrument capable of producing or reproducing music and sound) or any vibration or resonance or other form of disturbance or other acts or things in or on the Premises which is or are or may be or become a nuisance to the tenants or occupiers of adjacent or neighbouring premises;

22.4 Tenant shall not do or permit or suffer to be done any act or thing which may be or become a nuisance to Landlord or to the tenants or occupiers of other premises in the Building or in any adjoining or neighbouring building and it is agreed that a persistent breach by Tenant of this Section shall amount to a breach of this Lease justifying Landlord exercise its right of re-entry hereunder;

22.5 Tenant shall not change Tenant's company name so as to conflict with or prejudice the business or reputation of the Building or Landlord.

23. LETTING NOTICES AND ENTRY.

During the six (6) months immediately before the expiration or sooner determination of the Lease Term, (a) Landlord shall be at liberty to affix and maintain without interference upon any external part of the Premises a notice stating that the Premises are to be let and such other information in connection therewith as Landlord shall reasonably require; and (b) Tenant shall allow Landlord or its authorised agents to enter the Premises together with prospective new tenants and Tenant shall show them the entire Premises.

24. RIGHTS RESERVED TO LANDLORD.

24.1 Subject to the Deed of Mutual Covenant of the Building, portions of the Building are reserved to Landlord, including exterior building walls, core corridor walls and doors and any core corridor entrance, but excluding the Premises and the inside surfaces of all walls, windows and doors bounding the Premises. Landlord also reserves any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other building facilities, and the use thereof, as well as the right to access thereto through the Premises for the purposes of operation, maintenance, decoration and repair.

24.2 Landlord shall have the following rights exercisable except as provided in this Section 24.2 (a)without liability to Tenant for damage or injury to property, person or business (all claims for damage being hereby released), and without effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for setoffs or abatement of rent:

(a) To enter, upon twenty-four (24) hours written notice or upon twenty-four (24) hours telephone notice to Tenant's facility manager then on duty, the Premises for the purpose of inspecting the same, posting notices of non-responsibility, exhibiting the Premises to prospective tenants during the last six months of the Initial Term or any Additional Term or purchasers or making such repairs or replacements therein as may be required by this Lease or as Landlord may deem appropriate; provided that Landlord shall use all reasonable efforts not to disturb or cause inconvenience to Tenant's use and occupancy of the Premises.

(b) If, in the event of an emergency, Tenant does not provide immediate entry to Landlord's authorized representatives, Landlord may use any other means which Landlord may deem proper to open such doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by these means shall not be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, or grounds for any abatement or reduction of rent. Any damages or losses on account of any such entry by Landlord shall be Tenant's sole responsibility except as otherwise expressly provided herein. Nothing in this Section 24 shall be construed as obligating Landlord to perform any repairs, alterations or decorations, except as otherwise expressly required in this Lease. Notwithstanding the foregoing, Landlord shall designate to Tenant in writing the names of Landlord's representatives, such representatives shall be entitled to enter the Premises as set forth in this Section 24.2.

(c) To change the name of the Building.

(d) To install and maintain signs on the exterior and interior of the Building, except within the Premises.

(e) To advertise, decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy during the last six (6) months of the term hereof if, during or prior to such time, Tenant has vacated the Premises, or at any time after Tenant abandons the Premises.

(f) To do or permit to be done any work in or about the exterior of the Building or any adjacent or nearby building, land, street or alley.

(g) To grant to anyone the exclusive right to conduct any business or render any service in the Building, provided such exclusive right shall not operate to impair or hinder Tenant from the use expressly permitted by this Lease.

25. FORCE MAJEURE.

Whenever there is provided in this Lease a time limitation for performance by Landlord or Tenant of any construction, repair, maintenance or service, the time provided for shall be extended for as long as and to the extent that delay in compliance with such limitation is due to an act of God, governmental control or other factors beyond the reasonable control of Landlord or Tenant, respectively.

26. WAIVER OF CLAIMS; INDEMNITY.

26.1 Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of, and waives all claims it may have against Landlord, its agents, employees, partners, officers, directors, affiliates and successors in interest (collectively, the "Landlord Group") for damage to or loss of property or personal injury or loss of life resulting from the Building or Premises or any part thereof becoming out of repair, by reason of any repair or alteration thereof of a non-structural nature, or resulting from any accident within the Building or Premises or on or about any space adjoining the Building or Premises, or resulting directly or indirectly from any act or omission of any person, or due to any condition, design or defect of the Building or Premises, or any space adjoining the Building or Premises, or the mechanical systems of the Building or Premises, which may exist or occur, whether such damage, loss or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, and regardless of whether the cause of such damage, loss or injury or the means of repairing the same is accessible to Tenant; provided such assumption and waiver shall not apply to claims caused by the gross negligence or wilful misconduct of Landlord or its agents or employees.

26.2 Tenant hereby agrees to indemnify, defend, and hold Landlord and Landlord Group harmless from and against (a) any and all claims, demands, suits, fines, losses, expenses and liabilities (collectively, "Claims") for or relating to injury or loss of life to persons or damage to or loss of property arising from Tenant's use of the Building or the Premises, or from the conduct of Tenant's business, or from any work done, permitted or suffered by Tenant in or about the Premises or elsewhere, or from any negligence or intentional conduct of Tenant or Tenant's agents, employees, contractors, licensees, invitees, representatives or successors in interest; (b) any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; and (c) all costs, legal costs, expenses and liabilities incurred by Landlord or any member of Landlord Group in or in connection with any such Claim except where such Claim is due to the gross negligence or wilful misconduct of Landlord or its agents. In the event that any action or proceeding is brought against Landlord or any member of Landlord Group by reason of any such Claim, Tenant upon notice from Landlord shall defend such action or proceeding at Tenant's cost and expense by counsel approved by Landlord, such approval not to be unreasonably withheld. Tenant's obligations under this Section 26.2 shall survive the expiration or termination of this Lease as to any matters arising prior to such expiration or termination or prior to Tenant's vacation of the Building. Neither the directors, officers, shareholders and employees of Landlord shall be personally liable for any claim or judgment against Landlord under any circumstances.

26.3 Tenant acknowledges that construction or alteration works will be undertaken by Landlord or other tenants on the other floors or common parts of the Building. Landlord will use commercially reasonable, good faith efforts to minimize the disturbance, inconvenience, interruption of building services which may be caused to Tenant; however, Landlord shall have no liability whatsoever in connection with such disturbance, inconvenience or interruption and shall not be responsible for any loss or damages to either to persons or properties or interference with Tenant's business unless due to Landlord's gross negligence or willful misconduct, nor is it a ground for abatement of rent. Tenant's waiver and indemnity set forth in Section 26.1 above shall specifically apply to this subsection.

27. INSURANCE

27.1 Tenant shall procure and shall maintain in effect to the satisfaction of Landlord with a reputable insurance company at Tenant's sole cost and expense throughout the term of this Lease, including any extensions and renewals thereof, public liability and property damage insurance against claims for bodily injury, death or property damage occurring upon or about the Premises or in the common areas of the Building, in each case naming Landlord and its managing agents as additional insured and, upon request by Landlord, naming the holder of any mortgage or like encumbrance or the lessor under any underlying lease covering the Building as additional insured, with a limit of liability of not less than US$2,000,000.00 single limit.

Tenant shall also procure and maintain, at Tenant's sole cost and expense throughout the term of this Lease, casualty insurance on Tenant's personal property in the Premises and any leasehold improvements which Tenant installed at its own cost in an amount at least equal to the full replacement cost of such property, providing coverage against all perils insured against by a "fire and extended coverage" policy, as well as sprinkler damage, vandalism and malicious mischief.

Tenant shall also obtain the following insurance in so far as the same is applicable or available:

(a) Worker's compensation and employer's liability insurance in form and amount satisfactory to Landlord.

(b) Loss of income and extra expense insurance and business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to or use of the Premises or the Building as a result of such perils.

(c) Liquor liability insurance coverage in limits of not less than Five Hundred Thousand Dollars (US$500,000) if at any time during the term hereof any alcoholic beverages of any nature are served on the Premises.

(d) Any other form or forms of insurance as Landlord or Landlord's lender or ground or primary lessors may reasonably require from time to time in form, in amounts, and for insurance risks against which a prudent tenant of a comparable size and in a comparable business would protect itself.

Such policies of insurance shall be with insurance companies acceptable to Landlord, shall not have a deductible amount exceeding US$5,000.00 in the aggregate, and shall specifically provide that the insurance afforded by such policies for the benefit of Landlord and its managing agents and Landlord's mortgagees and ground lessors shall be primary, and that any insurance carried by Landlord or Landlord's mortgagees and the manager or the management office of the Building shall be excess and non-contributing. Such policies shall be evidenced by certificates of insurance delivered to Landlord from time to time showing such insurance to be at all times prepaid and in full force and effect and providing that such insurance cannot be cancelled or modified upon less than thirty (30) days' prior written notice to Landlord, and such other evidence of coverage requested by Landlord. (Such evidence may consist of

copies of such policies, including additional insured endorsements.) If at any time Tenant has not provided Landlord with a then currently effective certificate of insurance or other evidence of coverage acceptable to Landlord as to any insurance required to be maintained by Tenant, Landlord may, without further inquiry as to whether such insurance is actually in force, obtain such a policy and Tenant shall reimburse Landlord, upon demand as additional rent hereunder, for the cost thereof, together with Landlord's administrative fee equal to twenty five percent (25%) of the premium.

27.2 Tenant hereby waives its rights against Landlord and its managing agent and their respective partners, officers, directors, shareholders, employees, agents, representatives, contractors, affiliates, successors, licensees, and invitees with respect to any claims or damages or losses (including any claims for bodily injury to persons and/or damage to property) which are caused by or result from (a) risks insured against under any insurance policy carried by Tenant at the time of such claim, damage, loss or injury, or (b) risks which would have been covered under any insurance required to be obtained and maintained by Tenant under this Lease had such insurance been obtained and maintained as required. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease.

27.3 Landlord and Tenant shall each use its reasonable endeavours to cause each casualty insurance policy required to be obtained by it pursuant to this Lease or otherwise in respect of the Building or Premises to provide that the insurer waives all rights of recovery by way of subrogation against the other party and its managing agent and their respective agents, partners, officers, directors, shareholders, employees, agents, representatives, contractors, affiliates, successors, licensees, and invitees in connection with any claims, losses and damages covered by such policy. If Tenant fails to maintain insurance required hereunder, Tenant shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

28. FIXTURES, TENANT IMPROVEMENTS AND ALTERATIONS.

28.1 Tenant shall be permitted to initially carry out the following works in relation to the Premises (collectively, the "Initial Work") at its sole cost and expense and subject to the plans and specifications for such Initial Work, and Tenant's proposed architects, engineers or contractors, being approved in advance by Landlord or its relevant representatives, where necessary (such approval not to be unreasonably withheld)

(a) Installation of a twenty-four (24) hour heating, air conditioning and ventilation ("HVAC") system sufficient for the conduct of Tenant's business;

(b) Installation of a back-up generator system sufficient for the conduct of Tenant's business;

(c) Arranging for the metering of its own electrical supply to the Premises and the HVAC with the relevant utility provider;

(d) Installation of an electrical grounding system sufficient for the conduct of Tenant's business and in accordance with applicable law;

(e) Reinforcement of floor load capacity for the Premises to accommodate Tenant's requirements for its telecommunication equipment, UPS, batteries, and otherwise sufficient for the conduct of Tenant's business;

(f) Blockage of any window of the Premises so long as the blockage is not visible from the exterior of the Building and as long as it will not violate any ordinances/orders/regulations/law from time to time in force including but not limited to fire services regulations/rules and building regulations/rules;

(g) Installation of an FM 200 fire suppression system independent of the Building's system and modification of the sprinkler system presently serving the Premises to a dry pipe double pre-action system; and

(h) Carry out all other works included in the draft (and revised) plans and specifications provided by Tenant to Landlord after the Commencement Date.

In connection with the installation of the equipment set forth in paragraphs (a), (b) and (d) above, Tenant shall use its best endeavours to minimize the amount of space or area to be taken up by any of Tenant's unit, equipment, machine, conduits riders, wires, pipes or drains if the same are located outside the Premises whether or not Landlord has agreed to provide such space or area to Tenant at a charge or not, and Landlord shall provide Tenant with access to such conduit or shaft or such part of the exterior walls of the Building as indicated by Landlord subject to payment of costs as provided in Telecommunications Conduit Rider and Backup Power Generator Rider in order for Tenant to properly and efficiently install, operate and maintain such equipment. The various electrical risers, riser access at Lift 5 and chiller risers intended to be installed by Tenant are now shown in the diagrams in Exhibit F attached hereto.

On Landlord's approval of the final plans and specifications and Tenant's architects, engineers or contractors, Tenant shall reimburse Landlord for its reasonable engineering, architectural, consultant or other third party fees incurred by Landlord pertaining to its review and approval of such plans and specifications, provided that such reimbursement shall not in the aggregate exceed Ten Thousand Dollars (HK$10,000). In addition, Tenant shall reimburse to Landlord the reasonable pro-rated costs of services rendered by Landlord's management personnel and engineers to review and approve such plans and specifications, provided that such reimbursement shall not exceed Five Thousand Dollars (HK$5,000) per month during the construction period of the Initial Work. Landlord will complete its review no later than seven (7) business days following its receipt of final plans and specifications. At the time of its approval of the plans Landlord shall notify Tenant which fixtures and equipment or improvements must (i) be removed by Tenant at its sole cost and expense at the expiration or termination of the Lease, or (b) remain at the Premises as Landlord's property at the expiration or termination of the Lease.

28.2 Except as otherwise provided in this Lease, all improvements, fixtures and/or equipment which Tenant may install or place in or about the Premises, and all alterations, repairs or changes to the Premises, and all signs installed in, on or about the Premises, from time to time, shall be at the sole cost of Tenant, Landlord shall be without any obligation in connection therewith. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless

from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such alterations, repairs, changes, improvements, fixtures, and/or equipment in, on or about the Premises. Tenant's obligations under the preceding sentence shall survive the expiration or termination of this Lease as to any matters arising prior to such expiration or termination or prior to Tenant's vacation of the Building.

28.3 Subject to Sections 28.1, 28.2 and 28.10 and the prior written approval of Landlord, Tenant is absolutely prohibited from making any alterations, additions, improvements or decorations which: (i) affect any area outside the Premises; (ii) affect the Building's structure, equipment, services or systems, or the proper functioning thereof, or Landlord's access thereto; (iii) affect the outside appearance, character or use of the Building or the common areas; (iv) weaken or impair the structural strength of the Building; (v) lessen the value of the Building; (vi) will violate or require a change in any occupation permit or other certificate applicable to the Premises; or (vii) in the opinion of Landlord, will increase the Management Charges.

28.4 Before proceeding with any alteration, repair or change which is not otherwise prohibited in Section 28.3 above other than the Initial Work (each an "Additional Work"), Tenant must first obtain Landlord's written approval of the following, which shall not be unreasonably withheld or delayed and in any event be given within seven (7) business days of submission (i) the plans and specifications, and Tenant's proposed architects, engineers or contractors for such Additional Work; (ii) with respect to any connecting lines that will be outside the Premises (if such lines are permitted by Landlord in its sole discretion), a description of the areas of the Building to which Tenant will require access both for the initial work and for ongoing maintenance of the improvements or installations; (iii) the names of all contractors and subcontractors being approved in advance by Landlord or its relevant representatives, where necessary (such approval not to be unreasonably withheld) who will perform such work and will provide to Tenant within seven (7) business days following Landlord's receipt of Tenant's written request; (iv) copies of all construction contracts entered by Tenant with any contractor for the work; (v) copies of all liability, casualty, worker's compensation and builder's risk insurance applicable to the construction, maintenance and ongoing operation of the improvements and installations; and (vi) copies of all governmental permits required for such Additional Work. Landlord's consent to such matters shall not unreasonably be withheld; provided, however, that with regard to any such matters which may affect the structural members, the heating, ventilation, air conditioning or other building systems, exterior walls, windows and doors of the Building, and with regard to the installation of any signs outside the Premises, Landlord may grant or withhold its consent in its unlimited discretion. Landlord may impose, as a condition of its consent to any alterations, repairs or changes of the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors, materials, mechanics and materialmen approved by Landlord for work in the Building.

28.5 After Landlord has approved the change, repair or alteration and the other items of Initial Work or Additional Work, Tenant shall enter into an agreement for the performance of such change, repair or alteration with the contractors and subcontractors approved by Landlord. Before proceeding with any change, repair or alteration Tenant shall (i) provide Landlord with 10 days' prior written notice thereof; and (ii) pay to Landlord, within

10 days after written demand, the costs of any increased insurance premiums incurred by Landlord as a result of such changes, repairs or alterations. In addition, before proceeding with any change, repair or alteration, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such change, repair or alteration; and (B) a completion and lien indemnity bond, or other surety, for such change, repair or alteration. Landlord's approval of permits to the Initial Work and Additional Work shall not relieve Tenant of the obligation to obtain any other or supplemental permits required by the preceding sentence.

28.6 Tenant shall pay to Landlord the reasonable costs of Landlord's third party engineers and other consultants (but not Landlord's on-site management personnel) for review and approval of all plans, specifications and working drawings for any Additional Work within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants. In addition to such costs, Tenant shall pay to Landlord in any amount as may be agreed with Landlord, within ten (10) business days after completion of any Additional Work, the actual reasonable costs incurred by Landlord for services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the change, repair or alteration to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel. At the time it delivers its approval to any Additional Work pursuant hereto, Landlord shall notify Tenant in writing which fixtures and equipment or improvements must (i) be removed by Tenant at its sole cost and expense at the expiration or termination of the Lease, or (ii) remain at the Premises as Landlord's property at the expiration or termination of the Lease.

28.7 All changes, repairs and alterations shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in a good and workmanlike manner; (iii) in compliance with all laws, rules, and regulations of all governmental agencies and authorities; (iv) in such a manner so as to not to interfere with the occupancy of any other tenant in the Building, nor impose any additional expense or delay upon Landlord in the maintenance and operation of the Building; and (v) at such times, in such manner and subject to rules and regulations as Landlord may from time to time reasonably designate. Following completion of the work, Tenant shall promptly provide to Landlord a set of "as built" plans and specifications for the work and copies of all warranties and guarantees provided by Tenant's contractors and subcontractors in respect of any Initial Work or Additional Work designated by Landlord to remain part of the Premises and not removed by Tenant.

28.8 Throughout the performance of any such change, repair or alteration Tenant shall obtain in so far as is applicable or available, or cause its contractors to obtain, worker's compensation insurance and general liability insurance covering the work in compliance with provisions of Section 27 of this Lease, and builder's risk insurance for the work reasonably.

28.9 In the event Tenant orders any construction, alteration, decorating or repair work directly from Landlord, or from the contractor selected by Landlord, the charges for such work, together with Landlord's administration fee equal to 15% of the contract price, shall be deemed additional rent under this Lease, payable upon billing therefor, either in advance of

the start of work, or periodically during construction, or upon the substantial completion of such work, at Landlord's option.

28.10 Notwithstanding the provisions of Section 28.3 (ii) and (iii) above, subject to Landlord's and Landlord's Engineer's (as defined in the Lease) review and approval and the other provisions of the Lease, Tenant shall have the right, at Tenant's sole cost and expense, to reinforce the floor load capacity of the Building within the Premises to accommodate Tenant's requirements for floor loading of Tenant's telecommunications equipment, batteries and other office equipment within the Premises. Under no circumstances shall Tenant be permitted to remove or block up any window and/or exterior wall within the Premises.

28.11 Subject to Landlord's and Landlord's Engineer's (as defined in the Lease) review and approval, Tenant shall have the right, at Tenant's sole cost and expense, to relocate any of the Buildings' building systems within the premises which are below the concrete floor deck above. Such building systems may include but not be limited to, water pipes, ducts and fire sprinkler systems. In the absence of any agreement between Landlord and Tenant to the contrary, any such relocation must be restored to its original condition upon the expiration or earlier termination of the Lease at Tenant's sole cost and expense. Scheduling and relocation of all such relocation shall be coordinated with and approved by Landlord. However, Landlord reserves the absolute right to disapprove of any such relocation if Landlord reasonably determines that such relocation will create a material burden, hardship, or interference with the Building and its other tenants.

28.12 Exhibit C shall apply to the Initial Work and the Additional Work.

29. DECORATION DEPOSIT.

Prior to any commencement of Tenant's improvements or alterations, Tenant shall upon demand by Landlord deposit with Landlord a decoration/construction deposit (the "Decoration Deposit") in the amount set forth in Section G(3) of Summary as security for the proper carrying out of the Initial Work which shall only be refunded to Tenant (less all necessary deduction to compensate Landlord's loss or expenses as a result of the defective performance by Tenant during the decoration period) without interest within thirty (30) days of notice given by Tenant of full completion of the Initial Work.

30. NO KEY MONEY.

Tenant hereby expressly declares that for the grant of the Lease Term no key money or premium or other consideration otherwise than the rent and other payments herein expressly reserved and expressed to be payable has been paid or will be payable to Landlord or to any person whomsoever.

31. HAZARDOUS MATERIALS.

31.1 In addition to its other obligations under this Lease, Tenant covenants to comply with all laws relating to Hazardous Materials, as defined below, with respect to the Premises and the Building. Tenant shall have the right to use general office supplies typically used in an office area in the ordinary course of business (such as copier toner, liquid paper, glue,

ink and cleaning solvents) and items typically used in a comparable telecommunications business, provided that Tenant uses them in the manner for which they were designed and only in accordance with all applicable laws and regulations and the standards prevailing in the industry for such use, and then only in such amounts as may be normal for the office business operations or telecommunications operations conducted by Tenant on the Premises. Except as provided in the preceding sentence, neither Tenant nor any of Tenant's agents, employees, contractors, subtenants, assignees, licensees, invitees, successors, or representatives ("Tenant's Parties") shall use, handle store or dispose of any Hazardous Materials in, on, under or about the Premises, the Building or the site on which the Building is located. Tenant shall promptly take all actions, at its sole cost and expense, as are necessary to return the Premises, Building and site to the condition existing prior to the introduction of any such Hazardous Materials by Tenant or any Tenant Parties, provided Landlord's approval of such actions shall first be obtained. Furthermore, Tenant shall immediately notify Landlord of any inquiry, test, investigation or enforcement proceeding by or against Tenant or the Premises concerning the presence of any Hazardous Material.

31.2 Tenant's obligations under Section 26.2 to indemnify, defend and hold Landlord harmless from and against certain Claims shall be deemed to include, without limitation, any and all Claims (as defined in Section 26.2) relating in any way to investigation and clean-up costs, legal costs, professional charges and consultant fees that arise during or after the term of this Lease as a result of the breach of any of the obligations and covenants set forth in this Section 31, or relating in any way to any contamination of the Premises, Building or site directly or indirectly arising from the activities of Tenant or any Tenant Parties. Tenant's obligations under the preceding sentence shall survive the expiration or earlier termination of this Lease as to any matters arising prior to such expiration or termination or prior to Tenant's vacation of the Building. Tenant's obligations under this Section 31 shall not include responsibility for conditions in existence prior to the commencement of this Lease.

31.3 For purposes of this Lease, the term "Hazardous Materials" shall mean, collectively, asbestos, any petroleum fuel, and any hazardous or toxic substance, arms or ammunition, gun powder, salt-petre, petroleum, liquefied petroleum gas, butane gas, kerosene, other explosive or dangerous hazardous or prohibited goods within the meaning of the Dangerous Goods Ordinance (Cap.295) and the regulations made thereunder or any statutory modification or re-enactment which from time to time in force. Notwithstanding the foregoing, fuel for Tenant's backup power generators (whether petroleum, liquefied petroleum gas or otherwise) shall not be construed as Hazardous Materials.

32. MISCELLANEOUS.

32.1 No receipt of money by Landlord from Tenant after the termination of this Lease, the service of any notice, the commencement of any suit or final judgment for possession shall reinstate, continue or extend the term of this Lease or affect any such notice, demand, suit or judgment. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without

prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

32.2 If any provision of this Lease or its application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Lease or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable to any extent, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; and it is the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

32.3 The covenants and obligations of each party pursuant to this Lease shall be independent of performance by the other party of its covenants and obligations pursuant to this Lease.

32.4 The headings of Sections of this Lease are for convenience only and do not define, limit or construe the contents thereof. References made in this Lease to numbered Sections, Paragraphs and Subparagraphs shall refer to numbered Sections, Paragraphs or Subparagraphs of this Lease unless otherwise indicated.

32.5 Where appropriate, words in the singular, including without limitation the words "Landlord" and "Tenant", include the plural, and vice versa. Words in the neuter gender include the masculine and feminine genders, and vice versa, and words in the masculine gender include the feminine gender, and vice versa.

32.6 If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

32.7 Time is of the essence of this Lease. Failure of either party to perform any act strictly within the applicable period specified herein shall entitle the other to exercise all remedies herein contemplated. All references in this Lease to "days" shall mean calendar days unless specifically stated herein to be "business" days.

32.8 This Lease shall be governed by and interpreted in accordance with the laws of the Laws of the Hong Kong Special Administrative Region of the People's Republic of China.

32.9 All monetary obligations of Tenant remaining past due 7 days or more after the date specified herein for payment shall bear interest until paid daily interest on all such sums outstanding at the monthly rate of 1% calculated from the date on which the same shall be

due for payment until the date of payment as liquidated damages and not as penalty provided that the demand and/or receipt by Landlord of interest pursuant to this paragraph and this Lease shall be without prejudice to and shall not affect the right of Landlord to exercise any other right or remedy hereof (including without limiting to the right of re-entry) exercisable under the terms of this Lease.

32.10 This instrument, along with any riders, exhibits and attachments or other documents referred to in Section K of Summary (all of which riders, exhibits, attachments and other documents are hereby incorporated into this instrument by this reference), constitutes the entire and exclusive agreement between Landlord and Tenant relating to the Premises, and this agreement and said riders, exhibits and attachments and other documents may be altered, amended or revoked only by an instrument in writing signed by the party to be charged thereby. All prior or contemporaneous oral agreements, understandings and/or practices relative to the leasing of the Premises are merged herein or revoked hereby. References in this instrument to this "Lease" shall mean, refer to and include this instrument as well as any riders, exhibits, attachments or other documents referred to in Section K, and references to any covenant, condition, obligation and/or undertaking "herein", "hereunder" or "pursuant hereto" (or language of like import) shall mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and such riders, exhibits, attachments or other documents. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, attachments or other documents referred to in Section K unless the context thereof clearly requires the contrary.

32.11 Tenant hereby consents to amendment of this Lease as and to the extent required by any lender which makes a loan to Landlord secured in whole or in part by the Building, provided that no such change shall increase the rent payable hereunder or impair or derogate from the Tenant's use of the Premises.

32.12 Unless otherwise agreed in writing, if Tenant has dealt with any real estate broker or other person or firm with respect to leasing or renting space in the Building, Tenant shall be solely responsible for the payment of any fee due to said broker, person or firm and Tenant hereby indemnifies and holds Landlord harmless from and against any liability with respect thereto. Notwithstanding the foregoing, Landlord agrees to pay, and to hold Tenant harmless from, the commission owing to the brokers identified in Section J of Summary, as provided in a separate agreement between Landlord and such brokers.

32.13 This Lease shall not be binding and in effect until the original and a counterpart hereof has been executed and exchanged by each of the parties.

32.14 Annually, and not later than twenty (20) days after the same become available to Tenant, Tenant shall provide to Landlord copies of the annual audited financial statements of each of Tenant and Guarantor.

32.15 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord and Tenant under this Lease (including any actual or alleged breach or default of either) do not constitute personal obligations of the individual partners, directors, officers, shareholders, agents or employees of it or of its partners or agents, and the other party

shall not seek recourse against any such persons or entities or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord) shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Building and proceeds therefrom, and no other assets of Landlord.

32.16 If Tenant is identified herein as a corporation, then the persons executing this Lease on behalf of Tenant hereby represent that they are duly authorized to execute and deliver this Lease on behalf of Tenant pursuant to Tenant's by-laws or a resolution of its board of directors.

32.17 Subject to the provisions of Section 17 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, that no rights shall inure to the benefit of any transferee of Tenant unless the transfer to such transferee is made in compliance with the provisions of Section 17, and no options or other rights which are expressly made personal to the original Tenant hereunder or in any rider attached hereto shall be assignable to or exercisable by anyone other than the original Tenant under this Lease.

32.18 Except for Tenant's identity sign on the entry doors of the Premises and to be displayed on the directory board in the lobby of the Building (which signs shall be installed at Tenant's expense and consistent with the Building's signage program and otherwise subject to Landlord's prior written approval), Tenant shall have no right to place any sign upon the Premises, the Building or the site on which the Building is located or which can be seen from outside the Premises.

32.19 The effectiveness of this Lease and Landlord's obligations hereunder are subject to and conditional upon Tenant's delivery to Landlord of a lease guaranty in the form prescribed by Landlord in its sole discretion, fully executed by the guarantor or guarantors specified in Section L of Summary.

32.20 Unless otherwise provided in this Lease, whenever either party is required or entitled to make a determination or exercise its discretion under this Lease or any of its exhibits, riders, attachments or any other documents attached hereto or incorporated by reference herein, that party shall make its determination or exercise its discretion reasonably, having regard to all of the circumstances then prevailing.

32.21 Unless otherwise provided in this Lease, neither party shall unreasonably withhold or delay any consent or approval under this Lease.

32.22 Landlord or Tenant may, and is hereby authorized by the other party to, at any time and from time to time, collect, acquire, hold, store, use, disclose and/or transfer, on a

confidential basis, to reputable financial institutions and their officers, employees and legal counsel, whether within or outside Hong Kong, with whom Landlord or Tenant and/or its respective holding company has entered into or may propose to enter into financial arrangement or relations or from whom Landlord or Tenant and/or its respective holding company obtains or propose to obtain credit or banking facilities such information about the other party and its affairs and details of and information relating to all or any tenancies, transactions, dealings, agreements and/or arrangement whatsoever (whether past, present or proposed) between Landlord and Tenant in relation to this Lease as Landlord or Tenant in its absolute discretion considers appropriate.

Notwithstanding any rule or equity to the contrary, each party hereby irrevocably and unconditionally agrees that the other's disclosure of any information pursuant to the section hereof shall in no circumstances constitute any breach of confidentiality. Neither party shall be concerned with, or be liable or otherwise responsible for, any subsequent use, dealings with or disclosure by the abovementioned persons, entities, financial institutions or bodies, or otherwise, of any information furnished to them by or through such party. Each party hereby unconditionally exonerates the other from any liability whatsoever for any inaccuracy or errors in any information so disclosed or furnished by such party, irrespective of whether such party shall be negligent in any aspect whatsoever, but save and except any fraud on the part of such party.

33. RULES AND REGULATIONS AFFECTING TELECOMMUNICATIONS USE.

Nothing in the Rules and Regulations attached hereto as Exhibit B (or any further rules and regulations promulgated by Landlord as described in Section 22.2) shall be deemed to prohibit Tenant from installing in the Premises telecommunications switching equipment or any other equipment specifically permitted in the other provisions of this Lease, which does not pose a safety hazard or create a nuisance or illegal condition; provided, however, that Tenant shall comply with the provisions of this Lease (including the Rules and Regulations) regarding the moving, installation, operation, use, maintenance, removal, power requirements, and structural support of all such equipment, and shall obtain any approvals from Landlord required under this Lease as to such matters.

34. "AS IS" CONDITION.

Tenant is taking the Premises in its "as is" condition existing as of the execution date of this Lease, however, Landlord agrees to deliver the Premises in a broom-clean condition. In the event that structural defect and/or sub-standard water-proofing capacity is discovered in the Premises or other areas in the Building forming the subject matter of this Lease for use by Tenant within 4 weeks from the Commencement Date, Landlord shall at its sole cost make good such defects within 4 weeks of its being notified in writing of same by Tenant provided that such 4 week repair period shall be extended so long as Landlord is diligently pursuing rectification. In attending to such defect repairs, Landlord agrees to use commercially reasonable, good faith efforts to minimize the disturbance, inconvenience, and interruption to Tenant's use and occupation of the Premises and to Tenant's business.

35. ROOF SPACE AND FLAT ROOF SPACE ON 26TH FLOOR.

35.1 Provided that Tenant is not in default under this Lease beyond any applicable notice and cure period and subject to Landlord's structural engineer's review and payment of such charge as specified in Section 35.3 below, Tenant shall have the non-exclusive right throughout the term of this Lease, to use certain available spaces on the Roof ("Roof Space") and the Flat Roof on the 26th Floor ("Flat Roof Space") of the Building as shown on the Roof Plan and the Flat Roof Plan on the 26th Floor in Exhibit D attached hereto. The Flat Roof Space shall be used by Tenant only for the installation and operation of telecommunications antennae in a space not exceeding 100 square feet. The Roof Space shall be used by Tenant only for the installation and operation of HVAC equipment weighing approximately 560 tons which meets the tonnage requirement for the use of the Premises, in an area not exceeding 1,850 square feet. The installation and operation of equipment on the Roof Space and/or the Flat Roof Space shall be at the sole cost and expense of Tenant (including, but not limited to, costs of electrical supply, which shall be metered separately to Tenant at Tenant's expense). Such installation and operation shall be done in compliance with the other provisions of this Lease and shall require Landlord's prior written approval. Such approval may be conditioned, among other things, upon Tenant's making or paying for any reinforcement to the Roof Space and/or the Flat Roof Space reasonably deemed necessary by Landlord and/or Landlord's structural engineer to support Tenant's equipment. Tenant shall reimburse Landlord for any reasonable costs incurred for the review of Tenant's plans for work proposed to be performed on the Roof Space and/or the Flat Roof Space performed by Landlord's structural engineer or other third party consultants to Landlord. Any such equipment constructed or installed by Tenant pursuant to this Section shall be for the exclusive use of Tenant during the Term of this Lease.

35.2 Landlord may, in its sole discretion, at the expiration or termination of this Lease require Tenant, at Tenant's sole cost and expense, to remove any such antennae and HVAC equipment. Tenant shall repair any damage to the Building, the Premises, the Roof Space and the Flat Roof Space occasioned by the installation, construction, operation and/or removal of any fixtures, trade fixtures, equipment, additions, repairs, improvements and/or appurtenances pursuant to this Section. If Tenant shall fail to complete such removal and repair such damage, Landlord may do so and may charge the reasonable cost thereof to Tenant.

35.3 The Roof Space and the Flat Roof Space shall be licensed for use by Tenant at the rate of Hong Kong Eight Dollars (HK$8.00) per square foot per month for the first year of the Term of this Lease and thereafter subject to an annual increment of 3%. Tenant shall be responsible to pay rates, taxes, assessments, duties, imposition, management charges in connection with the use of the Roof Space and/or the Flat Roof Space in the same manner as Tenant is liable for Management Charges provided under this Lease and all outgoings in connection therewith, including but not limited to electricity, water, gas, steam consumption shall be for the account of Tenant. Such sums shall be deemed to be part of the monthly rent in addition to the Base Rent. No sub-licensing of the Roof Space and/or the Flat Roof Space shall be allowed except with the prior written consent of Landlord.

36. CAGE SPACE WITHIN MEET ME ROOM.

36.1 Provided that Tenant is not in default under this Lease beyond any applicable notice and cure period, in the event that Landlord shall build and/or create a "Meet Me Room" in the Building ("Meet Me Room"), Tenant shall be offered the first opportunity by Landlord to select and license the use of one standard size cage space within the Meet Me Room for the purpose of interconnecting Tenant's telecommunication equipment, fibre and optic cable. The use, installation and operation of Tenant's equipment in the said cage space shall be subject to a separate license agreement to contain commercially reasonable terms and conditions to be mutually agreed and entered into between Landlord and Tenant in the event that Landlord personally takes up the operation of the Meet Me Room. In the event that Landlord licenses the operation of the Meet Me Room to an independent operator, Landlord shall procure a separate license agreement to contain commercially reasonable terms and conditions to be mutually agreed and entered into between Tenant and the operator of the Meet Me Room (in either case such license shall be referred to as "Meet Me Room License"). The Meet Me Room License shall govern all aspects of Tenant's use of the Meet Me Room, including, but not limited to, ongoing license fees and/or usage charges, maintenance and operation costs, and Meet Me Room rules and regulations.

36.2 Without prejudice to Section 36.1 above, Landlord also agrees to provide Tenant with a further opportunity to select and license the use of an additional standard size cage space within the Meet Me Room if such space becomes available.

SEALED with the Common Seal of)
)
Landlord and SIGNED BY)
)
/s/ KENNETH GAW

Kenneth Gaw)
)
for and on behalf of Landlord in the)
)
presence of:)

/s/ LAM CHUI YEE JAIME

Lam Chui Yee Jaime
Trainee Solicitor
Johnson Stokes & Master
Hong Kong SAR

SEALED with the Common Seal of)
)
Tenant and SIGNED BY Brett L. Lay)
)
/s/ BRETT L. LAY)
)
for and on behalf of Tenant in the presence:)
))

/s/ RICHARD H. KALBRENER

Richard H. Kalbrener
Director

RECEIVED on or before the day and year first above written of and from Tenant the sum of

HK$555,202.25

DOLLARS FIVE HUNDRED FIFTY-FIVE THOUSAND TWO HUNDRED TWO DOLLARS AND TWENTY FIVE CENTS being the Cash Deposit above expressed to be paid by Tenant to Landlord.

/s/ KENNETH GAW

WITNESS:

/s/ LAM CHUI YEE JAIME

Lam Chui Yee Jaime
Trainee Solicitor
Johnson Stokes & Master
Hong Kong SAR

I hereby verify the signature of Jaime C.Y. Lam

/s/ JULIA KA YEE FUNG

Julia Ka Yee Fung
Johnson Stokes & Master
Solicitor, Hong Kong SAR

Exhibit 10.71

DATED JUNE 15, 2000.

PacEast Telecom Corporation

(PE)

to

Pacific Internet Exchange Corporation

(PIXC)

Co-Location Sub-Lease Agreement

relating to

4th and 5th floor of the B-block of TRC C-Building
at 1-1 Heiwajima, 6-Chome, Oota-ku, Tokyo 143-0006, Japan

DATED JUNE 15, 2000.

This Co-Location Sublease Agreement (hereinafter this "Agreement") is between PacEast Telecom Corporation whose registered office is at 4-4, Kojimachi 1-Chome, Chiyoda-ku, Tokyo 102-8483, Japan (hereinafter the "PE") and Pacific Internet Exchange Corporation whose registered office is at 1100 Alakea Plaza, 21st Floor, Honolulu, Hawaii 96813 (hereinafter "PIXC").

1. Overview

1.1 The PIXC wishes to operate a carrier neutral co-location business for, and provide related services to, internet service providers and other telecommunications carriers.

1.2 PE represents and warrants that it currently leases the B-block (hereinafter " **Premises**") of the TRC C-Building (hereinafter "**Building**") at 1-1 Heiwajima, 6-Chome, Oota-ku, Tokyo 143-0006, Japan from Tokyo Ryutsu Center (hereinafter "**Landlord**") and PIXC desires to the Premises to locate and operate certain network and/or telecom equipment, computer equipment (hereinafter " **Equipment**") as well as running of an office in the Space pursuant to the terms and conditions of this Agreement.

1.3 PE represents and warrants that PE has the consent of and authority from the Landlord to enter into this Agreement. PE and PIXC shall discuss the possibility of sharing certain common infrastructure facilities and equipment. The sharing may take the form of joint ownership, individual ownership with the provision of benefits of use to the other party for compensation, or any other form the parties may agree on, subject to terms and conditions to be negotiated by the parties, all of which shall be the subject of a separate contract. For the avoidance of doubt, nothing in this clause 1.4 shall be interpreted as restricting PIXC's right to install such infrastructure facilities and equipment on its own.

1.4 PE represents and warrants that it has secured commitment from both NTT and TTNET to provide diverse fiber connectivity into the Building. In addition, PE shall provide it's own diverse fiber connection between the Space and their facility at the Nishi Ooi NF Park Building, located in 9-15 Futaba, 2 chome, Shinagawa-ku, Tokyo. This diverse

fiber facility will provide virtual connectivity to existing PIXCs at the NF Park Building site. IT will also provide connectivity to other buildings connected to the Tokyo Metropolitan Fiber Ring that PE is constructing as well as direct access to the cable head of the Japan US undersea cable system.

2. Relationship between PE and PIXC

2.1 PE shall grant to PIXC a co-location sublease for the Space and shall provide the supporting services specified in Schedule A attached hereto (the "**Services**").

2.2 PIXC may use the Space for the purposes of installing, maintaining, and operating Equipment necessary to support telecommunications services and facilities in Japan, including without limitation to operate a carrier neutral co-location business for, and provide related services to, internet service providers and other telecommunications carriers.

2.3 If the PIXC wishes to interconnect the Equipment with the equipment or services of a third party at an interconnection point that will be physically located within the Building but outside the Space, the PIXC shall obtain the prior written consent of PE, which consent shall not be unreasonably withheld, conditioned or delayed. If the PIXC does not receive a written notice from PE either consenting or objecting to the interconnection described in the notice within [two (2) weeks] of delivery of the notice to PE, PE's written consent shall be deemed to have been given. If the PIXC completes such interconnection without obtaining PE's prior written consent, the PIXC shall be considered in breach of this Agreement, and PE may pursue any legal or equitable remedy, including but not limited to the immediate termination of this Agreement. For the avoidance of doubt, interconnection at a point physically located within the Space shall not require the consent of PE.

2.4 In connection with the Space subleased hereunder, PE shall perform services, which support the overall operation of the Space (e.g., janitorial services (including removal of everyday trash), environmental systems maintenance (including heating, ventilation and air conditioning), at no additional charge to PIXC for the Services. However, PIXC shall be required to maintain the Space in an orderly manner and in accordance with the

reasonable requests from PE, and shall be responsible among other things, for the removal of large trash (*sodai goma*), packing, cartons, etc., from the Space.

2.5 PIXC acknowledges that PIXC has only been granted a sublease for the Space, with rights of ingress and egress, and that PIXC has not been granted any other real property interests whatsoever in the Space, Premises or the Building.

2.6 PIXC must obtain the prior written approval of PE to use other common facilities within the Building (e.g., conduits, riser system, phone room, transformer room, roof of the Building and antenna) that are not located in the Space or Premises. PE and PIXC acknowledge that there may be certain cost or expenses resulting from use by PIXC of any other common facilities outside the Premises and agree that PE and PIXC shall negotiate with a view to agreeing the level of such costs or expenses, if any, to be borne by each party.

2.7 PIXC must obtain written approval from PE prior to PIXC offering Sub-lease.

3. Term of Agreement

3.1 The term of this Agreement (the "**Term**") shall be ten (10) years from the date of execution of this Agreement and PIXC shall, subject to clause 3.4 and clause 4, have the option to renew this Agreement for another 5-year term after the expiration of the Term.

3.2 PE shall maintain and continue the Master Lease of the Premises in which the Space is located for the duration of the Term as well as the optional period if the PIXC so desires to exercise his option.

3.3 In the event that the Master Lease is terminated before the end of the Term or the optional period, PE shall ensure that the Agreement be carried over and honored by its successor or the Landlord, whoever is applicable.

3.4 If either party materially breaches the terms and conditions of this Agreement, the other party may terminate this Agreement upon thirty (30) days' prior written notice to the breaching party if such breach is not cured within such thirty (30) day period.

4. Renewal

4.1 If the PIXC intends to exercise the option of continuing the Term for another five (5) years as provided in clause 3.1, he shall write to PE six (6) months prior to the expiration of the Term. The PIXC shall enter into a negotiation process with PE to determine the revised Rent and any other charges, if any, based on open market rates charged by other landlords for the similar area and services in the surrounding areas.

4.2 Following the expiration of the Term or the failure of the Parties to agree to a renewal period after the completion of the additional 5-year term, PIXC's sublease of the Space shall continue in effect on a month-to-month basis upon the same terms and conditions specified herein (except that prices will be subject to change), unless terminated by either PIXC or PE upon thirty (30) days prior written notice.

5. Termination

5.1 Upon termination of this Agreement for any reason, PIXC agrees to remove the Equipment and any other property that have been installed by PIXC or PIXC's clients no later than thirty (30) days after such termination.

5.2 If PIXC fails to remove the Equipment and other such property within such thirty (30) day period, PE shall be entitled to pursue all available legal remedies against PIXC, including, without limitation, removing the PIXC's property from the Space (and the Premises and Building) and storing it at PIXC's expense at an off-site location designated by PE and, at PE's option, selling the PIXC's property to cover storage expenses if PIXC fails to retrieve PIXC's property and pay all accrued storage expenses within sixty (60) days after receiving written notices from PE of its intention to effect such sale. PE shall not be held responsible for any damage to, or loss of, PIXC's property as are a result of enforcing PE's right under this clause 5.2, except where such damage or loss is caused by any omission and negligence of PE, its servants or agents.

5.3 Upon termination of this Agreement, PIXC agrees to reinstate the Space at PIXC's expenses to its initial condition fair wear and tear excepted.

5.4 In the event PIXC terminates this Agreement, PE shall have first priority to purchase the assets held by PIXC as a common infrastructure when it is determined that PIXC want to sell such assets.

6. Rent/Charges and Payment Terms

6.1 PIXC shall pay PE monthly the Rent set forth in Schedule A which includes charges for the Services.

6.2 The first and (estimated) last months' Rent are due before occupancy of the Space begins. The first and last months' Rent will be applied against Rent due in those months. In the event that the total amount received by PE exceeds the Rent payable in those months, the excess will be refunded to PIXC within thirty (30) days after the expiration or termination of this Agreement, provided that PE may, in lieu of refunding such excess, apply it in payment of any other obligations of PIXC which are payable to PE on the date this Agreement terminates or expires.

6.3 If the deposit for the last month's Rent is less than the actual due for that month, PE will invoice PIXC for the difference, which shall be payable under the terms otherwise applicable under this Agreement.

6.4 Monthly payment of all Rent is due by 10 days after receipt of the invoice.

6.5 At ninety (90) days past due, PE reserves the right to terminate this Agreement. This does not remove or modify in any way the obligation of PIXC to pay all outstanding Rent and interest charges.

6.6 Taxes will be stated separately on the invoice. PIXC shall pay all taxes and fees as set forth in Schedule A.

7. Interruptions in Services

7.1 PE shall use reasonable commercial efforts consistent with prevailing industry standards to maintain its facilities and operations in a manner, which minimizes errors and interruptions in the Services. For greater certainty the parties acknowledge that no power supply facility operation can be completely free from any errors or interruption in the

Services, whether within or outside of PE reasonable control. In the case of commercial power supply outage, the building standby generator supply shall automatically kick-in to assume the full load.

7.2 Notwithstanding clause 7.1, the Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by PE or by third-party providers. PE shall provide reasonable advance notice in writing or by e-mail of any scheduled service disruption.

8. Warranty and Assumption of Risk

8.1 PIXC uses the Services at PIXC's own risk. Except for clauses 1.2, 1.3 and 9.4(b), PE makes no warranty, expressed or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose.

9. Additional Terms Governing Use Of Space

9.1 Installation of Equipment

(a) Before beginning any delivery, installation, or removal work, PIXC shall notify PE in writing the description and the choice of suppliers/contractors of the work and/or equipment involved.

(b) PIXC may lease, provide or make available to any third party space within the Space without PE's prior written consent. However, if Customer should provide or make available space to a third party for office application, Customer shall deem to be in breach of this Agreement, and PE may pursue any legal or equitable remedy, including but not limited to the immediate termination of the Agreement and/or removal of Customer's Property in accordance with clause 5.2.

9.2 Insurance

The Landlord will provide insurance coverage for the Building. PE shall not be responsible for any loss or damage to property of any kind owned or leased by PIXC or its employees, contractors, and agents. The insurance covering the Equipment owned or leased by PIXC against loss or physical damage shall be insured by PIXC.

9.3 Assignment or Transfer

Neither party shall assign or transfer the rights nor obligations associated with this Agreement, in whole or in part, without the other party's written consent except to an assignee of all or substantially all of PIXC's assets. Notwithstanding the foregoing, PIXC may assign this Agreement to an affiliated company with prior written notice to PE.

9.4 Limitation of Liability

(a) In no event shall either party or any of its officers, contractors or employees be liable for any loss of profit or revenue or for any consequential, incidental, special, exemplary or punitive damages incurred or suffered by the other party, resulting from any performance or failure to perform under this Agreement even if the concerned party has been advised of the possibility of such loss or damage.

(b) The PIXC shall indemnify and hold harmless PE from and against PIXC's breach or non-performance of any conditions which may be imposed by any planning permission or building regulations relating to the Space for Building and against any claim by an adjoining owner or occupier or member of the public or other person arising out of, or incidental to, PIXC's use of the Space or the Building, or the exercise of PE's rights under clause 5.2 and from any loss, damage or expense suffered by PE resulting from the use of the Space or the Building by the PIXC, its employees, or any of its invitees; including damages or loss caused by gross negligence or willful acts or omissions of or by the malfunction of any equipment supplied or operated by the PIXC, its officers, employees, agents, or contractors. PE represents and warrants that as of the date of this Agreement, there are no conditions imposed by any planning permission or building regulations relating to the Space or the Building, and that PE's and PIXC's intended use of the Building is in conformance with all zoning and local use laws.

(c) PE shall indemnify and hold harmless the PIXC from and against all claims, proceedings, suits, actions, damages or losses whatsoever suffered or incurred by

the PIXC by reason of any act, omission or negligence of PE, its servants, other PIXCs or agents.

(d) Each party shall be liable to the other for damage or loss any property or death or injury to any persons if such damage or loss is caused by gross negligence or willful acts or omissions of such party or its officers, employees, agents or contractors, or by the malfunction of any equipment supplied or operated by such party.

10. Year 2000 Compliance

10.1 PE confirms that all software, hardware and the Service provided to this Agreement shall be Year 2000 compliance.

10.2 Year 2000 compliance mean that the software, hardware and/or Service has the capability of any computer chip dependent equipment or software to manipulate date values correctly between the 20th and 21st centuries, other than any non-compliance (i) which does not adversely affect any network, products or services; or (ii) which arises from the use of such equipment or software in connection with equipment or software of a third party which Is not Year 2000 compliant.

10.3 Manipulating date values encompasses correctly storing, processing, interpreting and calculating (both arithmetically and logically) date data, including system date, with date values ranging from, before, to and after the year 2000, including recognizing year 2000 as a leap year, and values spanning the period between 20th and 21st centuries.

11. Applicable Law

11.1 This Agreement shall be governed by and construed in accordance with the laws of Japan.

11.2 Any notice pursuant to this Agreement shall be in writing and shall be deemed given when actually received or, if earlier, three days after deposit into the mail. Notice given by electronic mail shall be deemed received one (1) business day after it is posted to the recipient's E-mail address. The parties shall submit any dispute relating to the subject matter of this Agreement to binding arbitration pursuant to the commercial rules of the

Japan Commercial Arbitration Association. The parties surrender and waive the right to submit any dispute to a court or jury, or to appeal to a higher court.

11.3 There shall be no arbitration of any claim that would otherwise be barred by a statute of limitations if the claim were to be brought in court. The arbitrator(s) shall not have the power to award punitive, consequential, indirect, or special damages. The arbitrator shall have the power to award costs and reasonable attorney fees to the prevailing party.

I hereby agree and understand the terms and condition of this Agreement and warrant that I am duly authorized to sign this Agreement on behalf of PIXC.

PIXC: Pacific Internet Exchange Corporation

Signature: /s/ RICHARD H. KALBRENER **Date: 6-15-2000**

Name: Richard H. Kalbrener
Title: President

PE

Signature: /s/ TATSUJIRO SAITO **Date: 6-12-2000**

Name: Mr. Tatsujiro Saito
Title: President

1.	The Space	4th and 5th floor and one-half of the 1st floor of the B-block of TRC C-Building, 1-1 Heiwajima, 6-Chome, Oota-ku, Tokyo 143-0006, Japan
2.	Area of the Space	Approx. 3,000 Square meter on the 4th and 5th floors and _____ square meters on the 1st floor
3.	Rent:	Yen 14,544,000 per month (4th and 5th floors) plus Yen 16,000/3.3. Square meter per month (1st floor) Consumption Tax (5%) Yen 14,544,000 x 0.05 = Yen 727,200
	Commercial Power:	Separate meter to be installed
4.	Rent includes:	1) Toilet, Building Air Con Room 2) Lighting tube, windows glass, door between corridor and PIXC room will be damaged by reasonable reason, they will be repaired at no additional charge. 3) Usage of water at Common area is at no additional charge. PIXC shall keep saving of usage. 4) Periodic check upon Law and Fire Departments 5) Article of Consumption Fuel of Generator, Toilet Paper, Paper Towel
5.	Term:	Rental Start Date: September 1, 2000 (PIXC's construction in a portion (approx. 500 square meters) of 5th floor can be started on July 1, 2000.) (PIXC's construction of rest of approx. 2,500 square meters on the 4th and 5th floors can be started on January 6, 2001.) (PIXC's construction on the 1st floor can be started on _____.) Rental Period: Ten (10) years with option to renew for an additional five (5) years.
6.	Payment Condition:	Payment Date: By August 21, 2000 in cash
7.	PIXC Construction Costs:	PIXC construction costs such as UPS, Air Con, raised floor shall be borne by the PIXC and have already been approved by PE.

FIRST AMENDMENT OF CO-LOCATION SUBLEASE AGREEMENT

This FIRST AMENDMENT OF CO-LOCATION SUBLEASE AGREEMENT (hereinafter, this "Amendment"), is hereby executed by and between PacEast Telecom Corporation (hereinafter, "'PE"), and Pacific Internet Exchange Corporation (hereinafter, "PIXC"), in connection with the Co-Location Sublease Agreement executed by the parties hereto as of June 15, 2000 (hereinafter, the "Agreement"), and the parties hereto hereby agree as follows.

1. In the event of a conflict between the terms and conditions of the Agreement and this Amendment, the terms and conditions of the Agreement shall be deemed revised in accordance with the provisions of this Amendment. All other terms and conditions of the Agreement shall remain in full force and effect. All capitalized terms not otherwise defined in this Amendment shall have the meanings given to them in the Agreement.

2. PIXC hereby confirms that the offering of a sub-lease to any third party with respect to the Space, pursuant to clause 2.7 of the Agreement, shall be undertaken only to the extent approved by Landlord, and PE shall use its best efforts to obtain such approval of Landlord.

3. PIXC shall bear all expenses relating to PIXC's build-out of the Space and any and all expenses relating to the management and the maintenance thereof undertaken by PIXC.

4. The charge for the use of the "diverse fiber connection" located between the Space and the Nishi Ooi NF Park Building to be provided by PE pursuant to clause 1.4 of the Agreement shall be an amount per month not to exceed 1,500,000 yen per one STM-1.

5. Neither PE nor PIXC shall be liable to the other in the event of damage to the property of the other or the failure of such party to perform its duties under the Agreement due to major natural disasters or other reasons beyond its reasonable control; provided, however, that the non-performing party shall use its best efforts to overcome the impediment to the performance of its duties under the Agreement.

6. On or before the date ten (10) days prior to the expiration date of the Agreement, PIXC shall remove the Equipment and any other property that have been installed by PIXC or PIXC's clients, and shall reinstate the Space, at PIXC's expense, to its initial position, fair wear and tear

excepted. In the event PIXC fails to remove such Equipment or other property by such date, PE shall have the rights to remove, etc., the same granted in Article 5 with respect to a termination of the Agreement.

7. PE and PIXC hereby acknowledge and confirm that the ability of PE to offer the Space to PIXC for co-location during the term of the Agreement, and to further offer PIXC the option of extending the same, pursuant to the provisions of Article 3 and such other related provisions of the Agreement, is limited by the terms and conditions of the Master Lease. Consequently, notwithstanding any provisions of the Agreement relating to the term of the Agreement or the renewal thereof to the contrary, PIXC shall make no claims of any kind against PE for compensation of damages in the event (i) the Agreement is terminated during the term thereof due to termination of the Master Lease by the Landlord; provided that such termination shall not have been due to a breach of the Master Lease by PE, or (ii) PIXC is unable to renew the Agreement due to the inability of PE, despite the best efforts of PE, to renew the Master Lease or execute a new Master Lease for an additional period of five years. In the event of a termination of the Master Lease for whatever reason, the Agreement shall be deemed terminated as of the same date. In the event of the expiration of the original term of the Master Lease together with a failure to renew the same or execute a similar lease agreement for a period of five years, the term of the Agreement shall be deemed to expire as of the initial date for expiration, notwithstanding the option to renew the same of PIXC. Notwithstanding the foregoing, however, in the event the term of the Master Lease is extending for a period of less than five years pursuant to a renewal or the execution of a similar lease between the Landlord and PE, PIXC shall be granted an option to extend the Agreement for a period equivalent to such extended period. PE shall obtain the prior written consent of PIXC with respect to any amendment of the Master Lease, which consent shall not be unreasonably withheld, conditioned or delayed.

8. In the event the Agreement is terminated during the term thereof by PIXC or for reasons attributable to PIXC, PIXC shall pay to PE an amount equivalent to the rental that would have been payable until the expiration of the Agreement had the Agreement not been so terminated. Notwithstanding the foregoing, however, in the event PE is able to execute a separate co-location agreement with a third party with regard to all or a portion of the area corresponding to the Space, PIXC shall be relieved of the obligation to pay that portion of the rental equivalent to the

amount or rent actually received by PE (i) as rental from such third party for the period prior to the expiration of the Agreement, and (ii) directly related to the rental by such third party of all or a portion of the area corresponding to the Space.

9. In the event PE or PIXC is subject to (i) an inability to pay its debts *(shiharai teishi),* (ii) a filing for the commencement of bankruptcy procedures, civil revival *(minji saisei),* corporate reorganization *(kaisha kosei),* corporate arrangement *(kaisha seiri),* or other similar procedures, or (iii) a resolution for corporate liquidation, the other party shall have the right to immediately terminate the Agreement.

10. Notwithstanding the provisions of clause 5.1, 5.2, and 5.3 of the Agreement, and in addition to the provisions of clause 5.4 of the Agreement, in the event PE terminates the Agreement in accordance with the terms thereof, as amended, PE may, by notification to PIXC, purchase at book value the transformer substation, (sub-*hendensho*), owned by PIXC and located in the Building. In the event PE terminates the Agreement and, at the time of such termination, PIXC has outstanding monetary obligations to PE under the Agreement, PE may purchase at book value all or a portion of the Equipment and set off such obligations of PIXC to PE against the purchase price thereof.

11. The parties hereby acknowledge and confirm that in the event PIXC elects to assign the Agreement pursuant to clause 9.3 of the Agreement, PIXC shall assign the same to a wholly-owned Japanese subsidiary of PIXC. Such assignment shall be made by written agreement executed by and among PE, PIXC and such assignee, and PIXC and such assignee shall provide to PE such documentation reasonably required for purposes of obtaining authorization by the Landlord for such assignment. In the event of such assignment, PIXC shall remain jointly and severally liable with such wholly-owned subsidiary of PIXC for any and all obligations of the subsidiary arising under the Agreement, and any agreements and memoranda of understanding related thereto.

12. PE and PIXC further agree to the following amendments to the Agreement:

(i) Clause 1.2 shall be amended to read:

"PE represents and warrants that it currently leases the B-Block (hereinafter "Premises") of the TRC C-Building (hereinafter "Building") at 1-1 Heiwajima, 6-Chome, Oota-ku, Tokyo 143-0006, Japan from Kabushiki Kaisha Tokyo Ryutsu Center (hereinafter "Landlord"). PIXC desires the co-location of that certain part of the Premises more particularly described in Schedule A and the drawings attached as Schedules B-1, B-2 and B-3 (hereinafter the "Space") to locate and operate certain network and/or telecom equipment and computer equipment (hereinafter the "Equipment") as well as running of an office in the Space pursuant to the terms and conditions of this Agreement."

(ii) The reference in clause 1.3 to "clause 1.4" shall be amended to read "clause 1.3".

(iii) Clause number 1.5 shall be re-numbered as clause 1.4.

(iv) In clause 2.3, the brackets around "two (2) weeks" shall be deleted.

(v) In clause 2.4, an additional parenthesis shall be added after "conditioning" in line 3 so as to read "conditioning))".

(vi) In clause 2.7, "Sub-lease" shall be amended to read "sub-lease".

(vii) The first line of Clause 3.2 shall be amended to read:

"PE shall maintain and continue the lease of the Premises, pursuant to the lease agreement in effect as of the date hereof between PE and Landlord, as such may be modified or amended from time to time, and all such other agreements relating to the lease of the Premises, (hereinafter, collectively, the "Master Lease"), in which the Space is located"

(viii) The first sentence of Clause 9.1(b) shall be amended to read:

"In the event PIXC wishes to provide or make available to any third party space within the Space, PIXC shall provide PE with ten (10) business days' prior written notice thereof. In the event PE objects to any such third party,

PE shall notify PIXC of the reasons for such objections within ten (10) business days from the date such notice was received, and PE and PIXC shall consult in good faith to resolve such matter."

(ix) The second sentence of clause 9.3 (which begins with "Notwithstanding the foregoing, PIXC may") shall be deleted.

(x) The Attachment to the Agreement shall be deleted in its entirety and replaced with the Attachment attached hereto.

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[This portion intentionally left blank.]

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13. PE and PIXC hereby acknowledge and confirm that Mitsubishi Electric Corporation guarantees jointly and severally to Landlord the performance of PE within the scope specified under the Master Lease, *(rentaihosyou)*.

IN WITNESS WHEREOF, the parties hereto have prepared two originals of this Amendment, one each to be held by each of the parties following the placing of seals hereon and the signing hereof by the authorized representatives of each party.

Date: October 31, 2000

PacEast Telecom Corporation

By: /s/ SATOSHI TANAKA

Name: Satoshi Tanaka
Title: President

Pacific Internet Exchange Corporation

By: /s/ RICHARD H. KALBRENER

Name: Richard H. Kalbrener
Title: President

Schedule A

1.	The Space	4th and 5th floor and one-half of the 1st floor of the B-block of TRC C-Building, 1-1 Heiwajima, 6-Chome, Oota-ku, Tokyo 143-0006, Japan
2.	Area of the Space	2984.08 square meters on the 4th and 5th floors, and 959.78 square meters on the 1st floor (including berth, space for oil tank)
3.	Rent for Space:	Yen 14,544,000 per month (4th and 5th floors), plus Yen 4,098,000 per month (1st floor), plus consumption tax
	Monthly Fee for Medium Voltage Switchgear Equipment	Yen 2,326,000 per month, plus consumption tax
	Maintenance of Equipment:	Maintenance: TBD (under negotiation with TRC)
4.	Commercial Power, Gas, Water:	PIXC to pay for power, gas and water actually used in Space on 4th and 5th floors
5.	Rent to Include:	1) Toilet 2) Lighting tube, windows glass at common area 3) Usage of water at common area 4) Consumables; toilet paper, paper towels
6.	Term:	Rental Start Date for Space: November 1, 2000 (PIXC's construction on the 4th, 5th floor and 1st floor may be started on November 1, 2000.)
		Rental Period: Ten (10) years
		Rental start date for medium voltage switchgear equipment: April 1, 2001
7.	PIXC Construction Costs:	PIXC construction costs, such as UPS, air-conditioning, raised floor, etc., shall be borne by the PIXC and have already been approved by PE

PIHANA
PACIFIC

November 22, 2000

Pihana Pacific Japan K. K.
Toranomon Mori Building, No. 40
13-1 Toranomon 5-chome
Minato-ku, Tokyo 105-0001
Japan

RE: Assignment of Co-Location Sublease Agreement

Gentlemen:

Reference is made to the Co-Location Sublease Agreement between PacEast Telecom Corporation (" PE") and Pacific Internet Exchange Corporation (now known as Pihana Pacific, Inc.) dated as of June 15, 2000, as amended by the First Amendment of Co-Location Sublease Agreement dated October 31, 2000 (as so amended, the "Agreement"). We hereby agree to assign the Agreement in its entirety, together with the Memorandum of Understanding Regarding Joint Facilities dated October 31, 2000, and all other related documents executed between PE and Pacific Internet Exchange Corporation, to Pihana Pacific Japan K.K. ("Pihana Pacific Japan"), and Pihana Pacific Japan hereby accepts such assignment. We hereby agree to be jointly and severally liable to PE for the performance of Pihana Pacific Japan of its obligations under the Agreement and related documents assigned hereby.

Please confirm your acceptance and agreement by signing below.

Sincerely,

RICHARD H. KALBRENER

Richard H. Kalbrener
President & CEO

/cp

Accepted and Agreed:

Pihana Pacific Japan K.K.

By: /s/ RICHARD H. KALBRENER

Richard H. Kalbrener
Director Date: 11/22/00

Consented To:

PacEast Telecom Corporation

By: /s/ SATOSHI TANAKA 12/25/00

Name: Satoshi Tanaka Date
Title: President

1100 Alakea Street, Suite 3000 • Honolulu, Hawaii 96813 • Tel 808.528.7500 • Fax 808.528.7555 • www.pihana.com

Exhibit 10.72

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ANNEXURE "A" TO LEASE DATED 20/10/2000

LESSOR: Lend Lease Real Estate Investments Limited

LESSEE: PIXC Australia Pty Limited

PREMISES: Unit B, 639 Gardeners Road, Mascot

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1. Definitions and Interpretation

1.1 Definitions

In this Lease unless the contrary intention appears:

API means Australian Property Institute.

Base CPI means the Consumer Price Index (All Groups) for Sydney last published prior to the date TWELVE (12) months prior to the relevant CPI Review Date.

Base Rent means the amount in **Item 9**, as varied under this Lease.

Building means the building containing the Premises on the Land and the Lessor's fixtures, fittings, furnishings, plant and equipment at any time in the building (all as they may from time to time exist, and where the context permits, includes any part of them).

Business Day means Monday to Friday, excluding NSW public holidays.

Car Park means that part of the Complex set aside from time to time by the Lessor for parking cars.

Common Areas means all parts of the Complex and the Land now or in the future used in common by lessees of the Complex and their invitees, all as they may from time to time exist, and where the context permits includes any part of them.

Complex means the buildings and any other improvements now or in the future on the Land and the Lessor's fixtures, fittings, furnishings, plant and equipment at any time in the buildings and other improvements (all as they may from time to time exist, and where the context permits, includes any part of them).

Contamination means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Covenantor means the person (if any, and if more than ONE (1), each of them) named in **Item 14** and includes a person's executors and administrators and a corporation's successors.

CPI Review Date means each date (if any) specified or referred to in **Item 13(b)**.

Criteria means the criteria in clause 9(a) of **Schedule 2**;

Current Base Rent means the annual market rent of the Premises as at the subject Review Date, on the basis of clause 9 of **Schedule 2**;

Current CPI means the Consumer Price Index (All Groups) for Sydney last published prior to the subject CPI Review Date.

Established Complex Hours means the hours during which the Lessor is permitted to keep the Complex open for business (in accordance with all laws and the requirements of all relevant authorities).

Environmental Laws means all laws relating to the environment including but not limited to any law relating to the use of land, planning, environmental assessment, the environmental or historic heritage, water, water catchments, pollution of air, soil, ground water or surface water, noise, soil, chemicals, pesticides, hazardous goods, building regulation, occupation of buildings, public health or safety, occupational health and safety, environmental hazard, any aspect of protection of the environment or the enforcement or administration of any of those laws (whether those laws arise under statute or the common law or pursuant to any permit, licence, approval, notice, decree, order or directive of any governmental agency or otherwise).

Further Term means the further term referred to in **Item 8(1)**, commencing on the day after the date in **Item 7**.

Land means the land described in **Item 1** and, where the context permits, includes part of that land but for the purposes of the definitions of Complex and Outgoings means the land comprised in Folio Identifiers 1-3/SP 38125.

Lease means this lease (and any annexure, exhibit, plan and schedule to it) and includes any equitable lease or lease at law evidenced by this document (and any annexure, exhibit, plan and schedule to it).

Lessee means the person named in **Item 4** and includes its successors, executors and administrators, its assigns approved by the Lessor and, where the context permits, includes the Lessee's Agents.

Lessee's Act or Omission means any act, default, misconduct, neglect, negligence or omission of any kind of the Lessee or the Lessee's Agents.

Lessee's Agents means each and every of the Lessee's agents, contractors, employees, invitees, licensees, sub-contractors, sub-lessees and other persons claiming through or under the Lessee.

Lessee's Equipment means the fixtures, fittings, furnishings, plant and equipment and other items at any time (whether before or after the commencement of the Term) installed in or brought onto any part of the Complex by or on behalf of the Lessee, the Lessee's Agents or the Lessee's Predecessors (and, where the context permits, includes any part of them).

Lessee's Notice means a notice complying with clause 4 of **Schedule 2** and served on the Lessor in accordance with that clause.

Lessee's Predecessors means each and every predecessor in title of the Lessee as lessee under this Lease (and, where this Lease is one in a series of consecutive leases granted pursuant to the exercise of options, it means each and every lessee under a prior lease in the series).

Lessee's Proportion means the percentage in **Item 12**.

Lessor means the person named in **Item 3** and includes its successors and assigns, and where the context permits includes its agents (including, without limit, the Manager), contractors, employees and sub-contractors.

Lessor's Equipment means all the Lessor's plant and equipment (including air-conditioning plant and equipment) in or exclusively servicing the Premises.

Lessor's Notice means a notice served on the Lessee in accordance with clause 2(a) of **Schedule 2**;

Liabilities means each and every cost, expense, liability and loss of any kind and all damages.

Manager means any person appointed from time to time by the Lessor to manage the Land and the Complex and includes (unless the context otherwise requires) the agents, contractors and employees of that person.

New Lease Commencement Date means the day after the date in **Item 7**.

Outgoings has the meaning given to it in clause 3.2 and **Schedule 1**.

Parking Spaces means the number of parking spaces in the Car Park set out in **Item 16**. As at the date in **Item 6**, the parking spaces licensed to the Lessee are located as shown on the parking plan provided to the Lessee at or about the date in **Item 6**.

PCA means Property Council of Australia.

Permitted Use means the use described in **Item 10**.

Premises means (and, where the context permits includes part of) the premises described in **Item 2** and the Lessor's fixtures, fittings, furnishings, plant and equipment at any time in the premises. If the area of the Premises is at any time relevant, it must be measured in accordance with the specifications for measurement of gross lettable area published in the publication Property Council of Australia *"Method of Measurement"* (1997 revision).

Review Date means each date (if any) specified or referred to in **Item 13(a)**.

Term means the period commencing on the date in **Item 6** and expiring at midnight on the date in **Item 7**, and where applicable, the period of holding over under clause 9.8.

Termination Date means the date in **Item 7**.

User means each and every person authorised by the Lessee from time to time to use any of the Parking Spaces and each and every person claiming through or under an authorised person.

Valuer means a person satisfying the criteria in clause 3 of **Schedule 2** and appointed as a valuer pursuant to **Schedule 2**.

Westpac Indicator Lending Rate means the rate published as such from time to time by Westpac Banking Corporation. If that rate is discontinued, ceases to be quoted or ceases (in the Lessor's reasonable opinion) to reflect interest rate indicators of the type reflected by it at the commencement of this Lease, then it means the overdraft reference rate per annum applied from time to time by Commonwealth Bank of Australia at its principal office in Sydney. A certificate as to a rate given to the Lessor and signed by an officer of the relevant bank is final and binding on the parties to this Lease (except in the case of manifest error).

1.2 Interpretation

The table of contents and headings are for guidance only and do not affect the interpretation of this Lease. This Lease is governed by New South Wales law. In interpreting this Lease, no rule of construction applies to the disadvantage of a party because that party put forward this Lease.

1.3 Miscellaneous references

In the interpretation of this Lease reference to:

(a) any gender includes every gender;

(b) singular includes plural and vice versa;

(c) persons include bodies corporate and other legal entities;

(d) a Part, clause, schedule or an Item is, unless the context otherwise requires, a reference to a Part, clause or schedule of this Lease or an Item in the Reference Schedule;

(e) any body which ceases to exist, is reconstituted, renamed or replaced or has its powers transferred, refers to the body established in its place or which serves substantially the same objects as or succeeds to its powers; and

(f) the president of a body means the person acting as the president (or other principal officer) at a relevant time.

1.4 Covenants – joint and several

Any covenant, indemnity or agreement by TWO (2) or more persons as Lessee or as Covenantor binds them collectively and individually.

1.5 Lessee not to permit prohibited matters

Where the Lessee is prohibited from doing any act, matter or thing, it is also prohibited from permitting or suffering the act, matter or thing and it must ensure that the Lessee's Agents do not breach the prohibition. Despite the preceding sentence, the Lessee is not responsible for the actions of its invitees outside the Premises.

1.6 Exclusion of implied covenants and powers

Sections 84, 84A and 85 of the Conveyancing Act, 1919 do not apply to and are not implied in this Lease unless they are expressly included.

1.7 No partnership, agency or joint venture

Nothing in or under this Lease creates the relationship of partners, principal and agent or joint venturers between the Lessor and the Lessee.

1.8 Enforceability of powers etc

Any law which prejudicially affects any party's powers, discretions, remedies, rights or obligations (**Powers**) is excluded to the extent lawfully permissible. If any Power cannot be given full effect, that Power must be severed or read down to maintain (as far as possible) all other provisions of this Lease.

1.9 Whole agreement is contained in this lease

This Lease comprise the whole of the agreement between the parties in respect of their subject matter.

1.10 Consent and approval of lessor

Unless expressly stated in a particular provision, the Lessor must not unreasonably withhold or delay its consent or approval under this Lease (but may give it subject to reasonable conditions). Any consent or approval by the Lessor must be in writing.

1.11 Condition before lessor liable

Despite anything in this Lease to the contrary, the Lessor is not in default in its obligations unless the Lessee has given notice to the Lessor of the default and the Lessor has failed within a reasonable time after notice to take proper steps to rectify the default in accordance with this Lease.

1.12 References to manager

Any notice or thing which must be delivered or given to the Manager or any payment or request which must be made to the Manager, must be delivered, given or made to the Manager or such other person as may be nominated from time to time by the Lessor by notice to the Lessee. The Manager may exercise the Lessor's powers, discretions and rights and make any determination which may be made by the Lessor under this Lease unless the Lessor itself notifies the Lessee to the contrary.

1.13 Effect of execution

Each Lessee and Covenantor is bound by this Lease even though:

(a) any other Lessee or Covenantor has not executed or may never execute this Lease or the execution of this Lease by any other Lessee or Covenantor is or may become void or voidable, or

(b) this Lease has not been registered or may never be registered and despite any obligation the Lessor may have to register it.

This Lease is a deed, even if it is not registered.

1.14 Notices

(a) In this Lease, reference to notice means notice in writing.

(b) Any notice or other writing served by the Lessor is valid and effective if given under the common seal of the Lessor or the Manager or signed by an attorney, director, company secretary, authorised officer or solicitor of the Lessor or the Manager.

(c) Any notice or other writing is sufficiently served on the Lessee (or Covenantor) if served personally or if forwarded to the Lessee (or

Covenantor) by courier, facsimile or post to the Premises or the last address of the Lessee (or Covenantor) known to the Lessor or the Manager.

(d) Unless the Lessor otherwise notifies the Lessee, any notice or writing is sufficiently served on it if served on the Manager.

(e) If any notice or other writing is served on a day which is not a Business Day or is after 5:00pm (addressee's time) it is deemed to be served on the next Business Day.

2. Services Provided By Lessor

2.1 Quiet enjoyment

If the Lessee complies with this Lease, it may possess the Premises during the Term without disturbance from the Lessor (or persons claiming through it) except to the extent disturbance is expressly permitted by this Lease.

2.2 24 hour entry to premises

The Lessee may enter and use the Premises at any time, subject to this Lease, the law and requirements of statutory authorities.

2.3 Lessee's use of common areas

The Lessee may use the Common Areas in common with the Lessor (and others entitled to use them) in accordance with this Lease.

2.4 Services provided by lessor in respect of common areas

(a) The Lessor agrees to provide the following services in the areas and to the standards from time to time determined by the Lessor:

(1) gardening and landscaping in the Common Areas;

(2) lighting in the Common Areas;

(3) security in the Common Areas or perimeter security for the Complex (but not security in respect of the Premises or the Car Park); and

(4) a tenant directory board.

(b) The Lessor must have carried out a regular program for repair and maintenance of the Common Areas, including, without limit, of the

common driveway areas of the Car Park (but not the car parking spaces licensed to particular persons).

2.5 Limit on lessor's obligations

(a) The Lessor's obligations under clause 2.4 are subject to exceptions for delays or stoppages due to repairs, maintenance, testing, commissioning, cleaning, strikes, accidents or unforeseen or unavoidable causes.

(b) Despite clause 2.4 or any other provision of this Lease, the Lessor is not liable for any failure to comply with clause 2.4 or to otherwise provide or maintain any services or equipment where the failure is caused or contributed to (but only to the extent of such contribution) by the Lessee's Act or Omission.

(c) The Lessor may carry out at the Lessee's cost any maintenance, repair or rectification for which the Lessee is liable pursuant to sub-clause (b).

2.6 Grant of car parking licence

(a) The Lessor grants and the Lessee accepts a non-exclusive licence authorising the Lessee to park cars in the Parking Spaces during the Term subject to this Lease (and in particular, **Schedule 3**).

(b) Subject to clause 2.6(c), the Lessor must ensure that the part of the Complex set aside for the parking of cars from time to time is always of sufficient size to accommodate the Parking Spaces and is not altered or relocated so as to materially disadvantage the Lessee.

(c) If the Lessee exercises its rights pursuant to clause 4.10(a) the number of Parking Spaces shall be reduced having regard to the area occupied by the power generator or back up generators installed by the Lessee.

Where an obligation is imposed on the Lessor in relation to the Car Park, the Lessor must perform or cause the obligation to be performed.

(d) The Lessee is not given any right of exclusive occupation of the Parking Spaces. The rights conferred in relation to the Parking Spaces are in contract only.

2.7 Current Tenant

(a) The parties acknowledge that the Premises are currently occupied by Mayne Nickless Limited ("Current Tenant") under lease registered number 2408703.

(b) This Lease commences on the earlier of the following dates (**Commencement of Lease**):

(1) the date 7 days after the Current Tenant has vacated the Premises; and

(2) the date 6 weeks after the Lessee has notified the Lessor that it requires this Lease to commence

PROVIDED THAT in either case the Premises are available for occupation by the Lessee and the Lessor has notified the Lessee that the Current Tenant has vacated the Premises and the Premises are available for occupation by the Lessee.

The Lessor agrees that it will not request or encourage the Current Tenant to vacate the Premises unless the Lessee gives notice under clause 2.8(b)(2).

(c) Lessee forms the view that:

(1) the playing laws applicable to the Premises do not permit the Lessee's proposed use of the Premises; or

(2) the Lessee will not be able to obtain all necessary approvals from all relevant authorities on reasonable conditions and within a reasonable time to use the Premises for such use,

the Lessee will be entitled to terminate this Lease. The right of termination must be exercised prior to 31 December 2000 or such later date as the parties may agree. The Lessor agrees to take such steps as may be reasonably required on its part to assist the Lessee to obtain such approvals and the Lessee agrees to use its reasonable endeavours to obtain such approvals as soon as reasonably practicable. The Lessee must indemnify the Lessor for any costs and expenses reasonably incurred by the Lessor in assisting the Lessee to obtain the necessary approvals.

(d) If the Lessee terminates this Lease under clause 2.8(c) the Lessee must pay to the Lessor Base Rent and the Lessee's Proportion of the Lessor's estimate of Outgoings for the period of 9 months commencing on the date of termination by monthly instalments in advance. The Lessor must use reasonable endeavours to re-lease the Premises as soon as reasonably practicable after termination and the amount payable by the Lessee under this clause will be reduced by the amount of the rent or other payments received by the Lessor from any new tenant or occupant of the Premises in respect of the period of 9 months following termination of this Lease. The Lessor agrees to consider in good faith any leasing proposal submitted by the Lessee or the Lessee's agents. If the Lessee wishes to seek a replacement tenant for the Premises during this period it will be permitted to do so.

(e) The bond provided by the Lessee pursuant to clause 11 will be available to the Lessor as security for the Lessee's obligations under this clause 2.8 and will not be released until the Lessee has discharged its obligations pursuant to this clause 2.8.

(f) The Lessee irrevocably authorises and directs the Lessor (and its solicitors) to complete and deliver this Lease by inserting:

(1) the Commencement of Lease in **Item 6**; and

(2) the Termination of Lease date in **Item 7** being the date 15 years less 1 day after the date of the Commencement of Lease.

2.8 Repair by Lessor

(a) The Lessor must cause to be carried out a regular programme of repair and maintenance in respect of the external surfaces of the Building (including, without limit, the roof) and promptly carry out or cause to be carried out in a workmanlike manner using appropriate materials and equipment all such repairs and maintenance as are in such programme found to be necessary.

(b) The Lessor must repair or cause to be repaired (including, where necessary repair by way of replacement) any structural parts of the Building in need of repair within a reasonable time after becoming aware of the same.

(c) The Lessee agrees to notify the Lessor of any damage of a structural nature in or about the Premises upon actually becoming aware of the same.

(d) Despite sub-clauses (a) and (b) the Lessor is not obliged to carry out any maintenance work, repair or rectification work made necessary by reason of or arising out of the Lessee's Act or Omission or which the Lessee itself is obliged to carry out under this Lease.

(e) Any maintenance work, repair or rectification work made necessary by reason of or arising out of any occurrence referred to in sub-clause (d) may be carried out by the Lessor at the cost of the Lessee after giving notice of the work to the Lessee (except in an emergency or where the Lessor perceives an emergency, where no notice is required).

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3. Lessee's Obligations – Base Rent And Other Money

3.1 Payment of base rent and other money

(a) **Base rent**: The Lessee must pay Base Rent to the Lessor by monthly instalments each equal to ONE TWELFTH (1/12th) of the then current

Base Rent. If necessary, the first and last payments shall be apportioned in respect of time.

(b) **Outgoings**: Subject to clause 3.3, if the Lessor notifies the Lessee of the Lessee's Proportion of the Lessor's estimate of Outgoings, the Lessee must pay the Lessee's Proportion of the estimate to the Lessor during the period to which the estimate relates by equal monthly instalments.

(c) **Timing for payment of base rent and outgoings**: Instalments of Base Rent and Lessee's Proportion of estimated Outgoings must be paid (whether or not demanded by the Lessor) in advance on the first day of the Term and on the first Business Day of every calendar month in the Term.

(d) **Timing for payment of other money**: Unless otherwise specified in this Lease, all money payable by the Lessee to the Lessor must be paid within TEN (10) Business Days of service on the Lessee of the monthly statement requiring payment of the same.

(e) **Method of payment**:

(1) Unless otherwise agreed in writing between the Lessor and the Lessee, the Lessee must, if required by the Lessor, pay all Base Rent and Lessee's Proportion of Outgoings to the Lessor by directing the Lessee's bank to debit the Lessee's account for those amounts and credit them to the bank account nominated by the Lessor from time to time.

(2) Subject to paragraph (1) and unless the Lessor otherwise notifies the Lessee, all money payable by the Lessee to the Lessor must be paid by unendorsed cheque payable to the Manager delivered to the Manager at the place notified by the Manager.

(3) All money payable by the Lessee must be paid free of exchange, without deduction or set-off.

(f) **Services in premises**: The Lessee must promptly pay all accounts for electricity, oil, gas and other services consumed in the Premises by or on behalf of the Lessee.

(g) **Any special charges**: The Lessee must pay the Lessor any assessment for trade waste, excess water or other costs incurred as a result of the Lessee's use or occupation of the Premises and the Lessor's costs and expenses in operating, repairing and maintaining the services and facilities (if any) provided solely to the Premises. To the extent the services and facilities are provided to premises within the Complex (other than the Premises) and to the Premises such costs and expenses will be recoverable as an Outgoing pursuant to and in accordance with clauses 3.2 and 3.3. The Lessee must pay all costs (as defined in clause 3.2(b)) assessed directly on

the Premises, but excluding any costs of the kind referred to in clauses 3.2(a)(4) or (5), or on the Lessor or the Lessee in respect of the Premises. Unless directed otherwise by the Lessor, the Lessee must pay those costs directly to the relevant assessing authority on or by their due date.

(h) **GST**: Despite any other provision of this Lease, if a goods and services tax or similar value added tax (GST) is levied or imposed on any supply made (or deemed to be made) under or in accordance with this Lease, the amount payable for that supply (or deemed supply) is increased by an amount equal to that GST. Despite any other provision of this Lease, the amount payable by the Lessee for any Outgoings shall not be increased by the amount of any GST levied or imposed on the Lessor in respect of that Outgoing if the Lessor is entitled to an input tax credit or other similar tax credit for the amount of the GST. The Lessor must issue to the Lessee a tax invoice in respect of the payment required.

(i) **Rental Incentive**: Notwithstanding any other provision of this Lease, the Lessee is not obliged to pay Base Rent for the first five (5) months after this Lease is incapable of being terminated pursuant to clause 2.8.

3.2 Definition of outgoings

(a) "**Outgoings**" means all costs which the Lessor, acting in good faith, determines are paid or payable for or attributable to insuring, repairing, maintaining, managing, administering, supervising, keeping secure or providing services for the Complex and the Land (or any part of either of them), except:

(1) costs of cleaning any part of the Complex occupied for the time being by a lessee or licensee,

(2) any commission or similar charge paid to any person in connection with letting or licensing any part of the Complex,

(3) the Lessor's income tax or capital gains tax,

(4) any cost for which a particular lessee or licensee of any part of the Complex is responsible, or

(5) in relation to clause 3 of Section A of **Schedule 1**, costs of any structural work and costs treated by the Lessor (in good faith) in its accounting statements as capital expenses (but a repair by replacement of parts not comprised in structural works or treated as capital expenses is to be included in Outgoings).

(b) In this clause and in **Schedule 1**, "costs" means all assessments, charges, costs, duties, expenses, fees, levies, rates, taxes, wages and outgoings.

(c) Without limiting sub-clause (a), Outgoings include the costs referred to in **Schedule 1**. All Outgoings accrue daily in equal increments and must be apportioned accordingly.

3.3 Estimates of outgoings, statements and adjustments

(a) The Lessor may notify the Lessee of the Lessee's Proportion of the Lessor's estimate in good faith of Outgoings for any period not exceeding ONE (1) year in advance.

(b) As soon as practicable after each 1 July, the Lessor must give the Lessee a statement of Outgoings for the year ending on the preceding 30 June (**PrecedingYear**). The statement must contain or indicate:

(1) the amount for each clause heading in **Schedule 1** and the total Outgoings for the Preceding Year;

(2) copy of a certificate signed by a registered company auditor that in his opinion, based on the results of his auditing procedures, the statement records the Outgoings for the Preceding Year; and

(3) the balance of the Lessee's Proportion of Outgoings payable by the Lessee (or any over-payment to be credited to the Lessee).

(c) Unless the Lessor or the Lessee gives the other notice detailing a numerical error in the statement within ONE (1) month of its service, then within that same month:

(1) the Lessee must pay the Lessor any balance shown as payable by the Lessee in the statement; or

(2) the Lessor must credit any overpayment by the Lessee to the Lessee's account (or refund the overpayment if no other money is payable to the Lessor).

(d) If the Lessor or the Lessee gives notice under sub-clause (c), a further statement (complying with sub-clause (b)) must be given. Sub-clause (c) applies to the further statement.

(e) If the Lessor sells any of the land comprised in Folio Identifiers 1-3/SP38125 the Lessor, acting reasonably, must adjust the Lessee's Proportion to a percentage which then reflects the percentage which the gross lettable area of the Premises then bears to the gross lettable area of the buildings comprising the Complex other than the land sold by the Lessor.

3.4 CPI rent reviews

(a) At each CPI Review Date, the Base Rent must be reviewed and the Base Rent payable on and from the relevant CPI Review Date until the next CPI Review Date or Review Date (whichever occurs first) shall be the greater of:

(1) the Base Rent payable immediately prior to the relevant CPI Review Date plus an amount equal to four per cent (4%) thereof; and

(2) the amount calculated as follows:

$$A = B \times \frac{C}{D}$$

where:

A = the amount referred to in this paragraph (2);

B = the Base Rent payable immediately prior to the relevant CPI Review Date;

C = the Current CPI; and

D = tthe Base CPI.

(b) Where the application of sub-clause (a) results in a number of dollars and a number of cents, the amount must be rounded up to the nearest dollar.

(c) If at any time the Consumer Price Index is discontinued or abolished, then the price index substituted for it by the Australian Statistician shall be used for the calculations referred to in sub-clause (a).

(d) If no price index is substituted for the Consumer Price Index by the Australian Statistician, then such index or indices shall be used as in the opinion of the chief accountant or other similar senior responsible officer of Westpac Banking Corporation Limited (or such other bank as the Lessor may nominate from time to time) most accurately reflects the changes in the prevailing levels of prices in Sydney. A certificate as to the index or indices given to the Lessor and signed by the chief accountant or other similar senior responsible officer of Westpac Banking Corporation Limited (or such other bank as the Lessor may nominate from time to time) is final and binding on the Lessor and the Lessee.

(e) If at any time the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this

clause after the change takes place, regard shall be had only to index numbers published in terms of the new reference base.

(f) The Lessor's right to have the Base Rent reviewed as at a CPI Review Date is not forfeited, lost, postponed or otherwise prejudicially affected if the Lessor fails to review the Base Rent in accordance with this clause or to notify the Lessee of the reviewed Base Rent.

3.5 Interest payable by lessee on overdue money

(a) Without prejudicing the Lessor's other rights and remedies, the Lessee must pay interest to the Lessor at the Prescribed Rate on any money due but unpaid by the Lessee.

(b) Interest shall be calculated daily from the due date up to and including the date the Lessor receives full payment.

(c) Failure by the Lessor to promptly claim interest on arrears does not waive the Lessor's right to claim interest.

(d) "**Prescribed Rate**" means TWO per cent (2%) more than the Westpac Indicator Lending Rate current at the date the money becomes due, and at the first day of each month while the money remains due.

3.6 Cost of lease, default, lessor's approval etc

The Lessee must pay within TEN (10) Business Days of written notice the Lessor's reasonable costs (including legal costs) and all charges, duties, fees and expenses of or incidental to:

(a) the preparation, negotiation, completion, stamping and registration of this Lease (including any certificate of registration) and any further lease,

(b) any request for the consent or approval of or waiver by the Lessor (and of any head lessor and mortgagee of the Lessor),

(c) any breach or default by the Lessee or the Lessee's Agents under this Lease, and the exercise or attempted or proposed exercise of any right, power or remedy of the Lessor under this Lease, in law or equity, and

(d) surrender or termination of this Lease other than by expiration.

4. Lessee's General Obligations

4.1 Permitted use

(a) The Lessee must only use the Premises for the Permitted Use.

(b) The Lessee must promptly obtain and comply with all approvals, consents, licences and permits required for the Premises to be lawfully used for the Permitted Use and for any works to be effected in the Premises by the Lessee.

(c) The Lessee must not conduct any illegal, immoral, offensive or unlawful use in the Complex or do anything in the Complex which causes nuisance, damage or disturbance to any occupier of the Complex or any occupier of any nearby property.

(d) The Lessee must not, without the prior consent of the Lessor (given or withheld in its absolute discretion) and all relevant authorities, have in the Premises anything which is flammable, explosive, toxic, hazardous or injurious to health. If the Lessee, with the prior consent of the Lessor and all relevant authorities, has in the Premises anything which is flammable, explosive, toxic, hazardous or injurious to health, the Lessee must (at intervals of not more than SIX (6) months and more frequently if requested by the Lessor) provide to the Lessor a statement setting out in detail:

(1) the type and quantity of the items or materials on the Premises which are flammable, explosive, toxic, hazardous or injurious to health; and

(2) the licences and permits which the Lessee is required to effect and maintain in relation to those items and materials (together with evidence satisfactory to the Lessor establishing the currency of those licences and permits).

The Lessor acknowledges that it has consented to the Lessee installing underground fuel storage tanks (and storing fuel in those tanks) and such batteries as are reasonably required for the purposes of the Lessee's power generator and stand by power generators.

(e) The Lessee must take all reasonable steps to ensure that people in the Complex are not injured by any cigarette, cigar or tobacco smoke originating in the Premises.

(f) The Lessee must not bring on the Premises plant or equipment which may damage or overload the Complex.

(g) The Lessee must take all reasonable precautions to keep the Premises free of vermin, insects, birds and animals and, as required by the Lessor, must employ qualified pest exterminators.

4.2 Security of premises

(a) The Lessee must use all reasonable endeavours to keep the Premises safe from theft and to lock all lockable doors when the Premises are unoccupied.

(b) People authorised by the Lessor may enter the Premises for any purpose relating to security, but this does not make the Lessor responsible for the security of the Premises. People authorised by the Lessor may only enter the Premises under this clause 4.2(b) on giving reasonable notice to the Lessee and must be accompanied by a representative of the Lessee if the Lessee offers to make such representative available at a reasonable time. This clause 4.2(b) does not apply in the case of an emergency or where the Lessee's representative is not available at the appointed time.

4.3 Obligations relating to access

In exercising its rights in clause 2.2, the Lessee must comply with the Lessor's reasonable requirements for control of, access to and use of the Complex outside Established Complex Hours. Clause 2.2 does not limit the Lessor's right to at any time clean, maintain, repair, service, test, renovate and refurbish any part of the Complex.

4.4 Compliance with statutes

(a) The Lessee must comply with all statutes and regulations and all approvals, directions, requirements, notices, orders or permits of any authority in respect of this Lease, the Premises, the use of the Premises, the health or safety of people using the Premises, and the Lessee's Equipment (including all Environmental Laws).

(b) The Lessee is not liable under sub-clause (a) for any alteration or addition to the structural parts of the Complex unless caused or contributed to (and then only to the extent contributed to) by the Lessee's or the Lessee's Agents' particular use or occupation of the Premises.

(c) The Lessee must immediately give notice to the Lessor if the Lessee receives any direction, requirement, notice or order from any government or authority in respect of this Lease, the Premises, the Complex, the use of the Premises or the Complex, the health or safety of people using the Premises, the health or safety of people using the Complex or the Lessee's Equipment.

4.5 Advertisements and signs

The Lessee must not without the Lessor's prior approval and the prior approval of all relevant authorities:

(a) affix or display any advertisement, logo, notice, sign or other device to or in the Complex; or

(b) use the name of or any picture or likeness of the Complex for any advertisement or purpose other than as the address and place of business of the Lessee (and then only while the Lessee is in occupation of the Premises).

4.6 Fire or emergency drills; evacuation

(a) The Lessee must comply with all the Lessor's fire and emergency drills and instruction programs for fire and emergency procedures.

(b) The Lessee must appoint and keep appointed an adequate number of wardens for the Premises. The Lessee must promptly give notice to the Manager of the names of the wardens.

(c) Either the Lessor or the Manager (if informed of a bomb threat or believing there is a fire or other risk in the Complex) may request the Lessee and the Lessee's Agents to immediately vacate the Premises or the Complex and they must immediately comply.

(d) The Lessee and the Lessee's Agents have no claim against the Lessor or the Manager for any loss, injury, death, damages for loss of profits, abatement or set-off due to or arising out of any drill, program or evacuation under this clause, except to the extent that the same has been caused by the negligence of the Lessor or the Manager.

4.7 Equipment, systems and services

The Lessee must:

(a) not install or connect any equipment or do any act that overloads the Lessor's air-conditioning plant and equipment or the cables or boards through which electricity is conveyed in the Complex,

(b) ensure that any security alarm system installed by the Lessee does not activate any Complex system, and

(c) comply with the Lessor's reasonable requirements in relation to (and must not do anything which interferes with the efficient operation of) the air-conditioning plant and equipment, security, sprinkler and fire alarm installations and any other services in and amenities of the Complex.

4.8 Lessee to give notice of accident and lack of repair

Immediately on becoming aware of the same, the Lessee must notify the Manager of:

(a) damage, injury, death or loss occurring in and any defect or want of repair in the Premises or in any services in or to the Complex, and

(b) any circumstances likely to cause danger, risk or hazard to any person or property in or services and amenities of the Complex, including without limit any possible Contamination.

4.9 Any head lease or other interest

(a) The Lessee must permit any person having an interest in the Land or the Complex superior to or concurrent with the Lessor to exercise the Lessor's rights under this Lease and to exercise their lawful rights in respect of the Premises.

(b) Any person (other than the Lessor) who becomes entitled to receive the money payable under this Lease has the benefit of all the Lessee's and any Covenantor's agreements under this Lease. The Lessee and the Covenantor must (at the Lessor's reasonable cost) promptly on request enter into a deed with that person in the form and containing the provisions reasonably required by the Lessor.

4.10 Restrictions on use of common areas

(a) The Lessee must not use without the prior consent of the Lessor (given or withheld in its absolute discretion) and all relevant authorities any part of the Complex or the Land (other than the Premises) for any purpose other than a purpose for which it was constructed or provided (in the Lessor's reasonable opinion). The Lessor acknowledges that it will not unreasonably withhold its consent to the installation and maintenance by the Lessee of a power generator and back up generators in the Common Areas subject to the provisions of clause 5.2(b) to (e) applying mutatis mutandis.

(b) The Lessor may pass and run services through the drains, ducts, risers, pipes, cabling and wires forming part of or leading through or adjoining any Common Areas and change the area, location, type of finish of or facilities in the Common Areas.

(c) The Lessee must use all reasonable endeavours not to litter any Common Areas or put or leave them in a dirty or untidy condition.

(d) The Lessee must at all times strictly comply with:

(1) all traffic signs in and about the Car Park and its entrances and exits;

(2) any conditions of entry and rules applying from time to time in respect of the Car Park and of which the Lessee has been given a copy or which are displayed in the Car Park; and

(3) the Lessor's directions from time to time in relation to the use of and access to the Car Park.

This sub-clause does not limit the Lessee's obligations in relation to any Parking Spaces which have been licensed to the Lessee.

4.11 No warranty as to suitability, exclusive rights or otherwise

(a) The Lessee agrees that (other than as disclosed under sub-clause (b) or as expressly contained in this Lease), no promise, representation, undertaking or warranty given by or on behalf of the Lessor or the Manager has been relied on by the Lessee in entering into this Lease or has in any material way induced the Lessee to enter into this Lease.

(b) The Lessee must disclose to the Lessor in writing before the Lessee executes this Lease any promise, representation, undertaking or warranty (other than those expressly contained in this Lease) that the Lessee has relied on in entering into this Lease or which has in any material way induced the Lessee to enter into this Lease.

(c) The Lessee is liable to the Lessor in damages for all Liabilities which the Lessor or the Manager suffers or incurs arising out of the Lessee's failure to disclose and for any judgment awarded against the Lessor or the Manager arising out of any promise, representation, undertaking or warranty given by or on behalf of the Lessor or the Manager and not disclosed by the Lessee.

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5. Lessee's Obligations – Premises And Equipment

5.1 Repair of premises

(a) The Lessee must maintain, repair and keep the Premises in good and substantial repair, order and condition (the Premises being in that state at the date in **Item 6**), except for damage caused by reasonable wear and tear, explosion, earthquake, aircraft or other aerial device, civil commotion, fire, flood, lightning, riot, storm, tempest, act of God or war.

(b) Despite sub-clause (a), the Lessee is not required to repair any structural parts of the Premises except where the need for the repair arises out of the Lessee's Act or Omission, any act, default, misconduct, neglect, negligence or omission of the Lessee's Predecessors or any work effected

by or on behalf of the Lessee, the Lessee's Agents or the Lessee's Predecessors at any time (before or after the commencement of the Term).

(c) Despite sub-clause (a) and clause 9.5, the Lessee must, at its own expense:

(1) **re-paint**: paint, regrout, re-cover, clean or otherwise appropriately treat those parts of the Premises and the Lessee's partitions usually so treated in a proper workmanlike manner, with materials and to standards approved by the Lessor at or immediately prior to the Lessee yielding up the Premises

(2) **lessee's equipment**: maintain the Lessee's Equipment clean and in good repair and condition, and keep current maintenance and repair contracts (in accordance with the Lessor's reasonable requirements) in respect of any Lessee's Equipment linked to the air-conditioning, electrical, fire protection, emergency or other Complex systems;

(3) **lessor's equipment**: maintain the Lessor's Equipment clean and in good repair and condition, and keep current maintenance and repair contracts (with contractors approved by the Lessor and otherwise in accordance with the Lessor's reasonable requirements) in respect of any Lessor's Equipment in the nature of air-conditioning, electrical, fire protection or emergency systems; and

(4) **carpets**: repair any damage (but excluding fair wear and tear) to the carpet or the Lessor's other furnishings in the Premises where that damage arises from the installation, relocation or removal of any fixtures, fittings, furnishings, plant or equipment or from the Lessee's Act or Omission.

(d) In this clause "**repair**" includes replacement, where repair is not reasonably practical. Any replacements of the Lessor's fixtures, fittings, furnishings, plant and equipment belong to the Lessor.

5.2 Alterations to premises, partitioning and fixtures

(a) The Lessee must not without the prior approval of the Lessor and all relevant authorities:

(1) alter the Premises or the Complex,

(2) use in the Premises or the Complex any explosive power driven method of fixing articles or any cutting or welding equipment using or generating electric current, heat, flame, molten metal or spark,

(3) cut, deface, drill, hole, mark or affix anything to any floor, floor covering, ceiling, curtain, wall or window of the Premises or the Complex,

(4) install, alter or relocate the Lessee's partitions, fixtures or cabling in or adjacent to the Premises (**Lessee's Fixtures**), or

(5) install additional lights or alter lights, power outlets, switches, electrical switching arrangements, telephone outlets, Lessor's air-conditioning plant and equipment, plumbing, sprinkler, security and fire alarm installations or other equipment and plant in or adjacent to the Premises.

The Lessor's approval is not required in relation to alterations to the Premises under clause 5.2(a)(1) or matters referred to in clauses 5.2(a)(3), (4) or (5) (other than in respect of the Initial Fit Out referred to in clause 5.2(f)) which are within the Premises and which do not materially affect the structure, services, electrical, hydraulic, plumbing or mechanical components of the Complex or the Premises or the Lessor's Equipment.

(b) In seeking the Lessor's approval under sub-clause (a), the Lessee must submit to the Lessor the details the Lessor reasonably requires. The Lessor's approval to the matters in paragraphs (1) to (3) (inclusive) may be given or withheld in its absolute discretion.

(c) Any approvals given under sub-clause (a) will be subject to the Lessor's reasonable conditions including (without limit) the standard and quality of finishes and that:

(1) any contractor keeps current a public liability policy complying with the Lessee's obligations under clause 6.1 and a contractors all risk policy,

(2) the Lessee, its contractors and sub-contractors comply with any site agreements applying to the Complex,

(3) the work be supervised by a person reasonably approved by the Lessor and carried out by competent tradesmen,

(4) the floor coverings in the Premises and the floors of relevant Common Areas be lined by the Lessee with suitable material during delivery or removal of dust, fibre or powder creating material,

(5) the Lessee pays the Lessor's reasonable costs in considering the Lessee's submissions and supervising those works and the reasonable fees of any consultants engaged by the Lessor, and

(6) the Lessee obtains and delivers to the Manager copies of certificates of compliance issued by relevant authorities.

(d) The Lessee must pay:

(1) the cost of the Lessee's Fixtures and the cost of installing, altering or relocating the Lessee's Fixtures,

(2) the cost of all additional lights and all alterations to the items referred to in sub-clause (a)(5) reasonably required by the Lessor or required by law, by any authority or by the Lessor's insurer as a result of any of the matters referred to in sub-clause (a), and

(3) the cost of obtaining the approvals of all relevant authorities to the matters referred to in sub-clause (a).

(e) The Lessee must ensure that all work carried out by it or on its behalf is carried out at times and in a manner which causes no damage or nuisance to and which minimises disturbance and inconvenience to others occupying or using the Complex. The Lessee must comply with the Lessor's directions in that respect.

(f) Despite anything else in this lease:

(1) the Lessor acknowledges that the Premises have not been fitted out and that the Lessee proposes to carry out substantial fit out works including without limitation installing its own air conditioning and fire protection system, underground fuel storage tanks, power generators and other fixtures and fittings appropriate for a telehouse facility **("Initial Fit Out").**

(2) The Lessor must not unreasonably refuse or delay approval of the Initial Fit Out provided that the Lessor may withhold its approval in its absolute discretion in relation to any matters concerning the Initial Fit Out which the Lessor believes are likely materially and detrimentally to affect the structure, services, electrical, hydraulic, plumbing or mechanical components of the Premises or the Complex or the Lessor's Equipment.

5.3 As built drawings and commissioning data

Within ONE (1) month of completion of any works in clause 5.2, the Lessee must obtain and deliver to the Lessor written details of all commissioning data and hard copies of professionally drawn accurately dimensioned "as built" drawings of the works (including diagrams of the items referred to in clause 5.2(a)(5)).

5.4 No mortgage of lessee's equipment

The Lessee must not charge, lease, hire or mortgage any Lessee's Equipment without the Lessor's prior consent which will be given if the Lessee's credit provider promptly signs and returns the Lessor's reasonable documentation and the Lessee has paid the Lessor's reasonable costs and expenses of and incidental to the consent and documentation.

5.5 Cleaning of premises by lessee

(a) The Lessee must at its own expense engage a contractor (approved by the Lessor) to clean and remove garbage from the Premises. The Lessee must ensure that the contractor regularly cleans the Premises in a proper and workmanlike manner and at all times keeps the Premises clean and free from dirt, garbage and rubbish.

(b) The Lessee must store and keep all trade waste, trash and garbage in proper receptacles (provided by the Lessee) inside the Premises (including proper and sealed water tight containers for wet garbage) and arrange for the regular removal of all trade waste, trash and garbage from the Premises and the Complex.

(c) The Lessee must ensure that any equipment or material dangerous to health is properly wrapped before being disposed of and, where appropriate, is sealed in containers which are clearly marked to show the contents of the container and an appropriate warning.

(d) The Lessee must at all times keep and maintain any waste pipes, drains and conduits originating in the Premises clean, clear and free flowing between their points of origin and their point into the trunk drain. The Lessee must at its own expense employ properly licensed tradesmen approved by the Lessor to promptly clear any blockages.

5.6 Contamination & Underground Storage Tank ("UST")

Definitions

(a) In this clause 5.6, the following expressions have the following meanings:

"Commencement Date" means the date specified in Item 6.

"contaminant" has the meaning given to the term in the Contaminated Land Management Act 1997.

"Environmental Costs" means the following losses, costs, liabilities, expenses and damages:

(1) those incurred in any Remediation pursuant to a statutory obligation in respect of any Contamination of the land on which the Premises are situate (the "Land") by Pollutants;

(2) those incurred in any Remediation pursuant to a statutory obligation in respect of:

A. any contamination of properties adjoining the Land by; or

B. any exposure of such properties to;

Pollutants emanating from the Land;

(3) those incurred as a result of any claim in tort by any third party concerning the presence of Pollutants:

A. in or on the Land; or

B. in or on any land and emanating from the Land;

where that presence presents a significant risk of harm to human health or the environment;

(4) those incurred as a result of or in relation to any agreement between a party and any owner or occupier of land which agreement:

A. concerns the presence of Pollutants in or on that land and emanating from the Land where that presence presents a significant risk of harm to human health or the environment; and

B. was reached following receipt by the party of a claim by the owner or occupier;

(5) those incurred by way of fine or penalty on the party or any director or manager of the party as a result of the presence of Pollutants in or on any land.

"Pollutant" means a pollutant, contaminant, petroleum or petroleum product, dangerous or toxic substance, hazardous substance, chemical, solid, special liquid, industrial or other waste that is regulated in New South Wales in connection with the protection of the environment or health and safety.

"Remediation" has the meaning given to the term in the *Contaminated Land Management Act 1997 (NSW)*.

Environmental Indemnity

(b) Subject to paragraphs ((c)) and ((d)), the Lessor agrees to indemnify and hold the Lessee harmless from and against all Environmental Costs.

Limitation

(c) The Lessor has liability under paragraph ((b)) only to the extent that any Environmental Cost relates to Pollutants present in, under or on the Land or any land before the Commencement Date or Pollutants which migrate onto the Land before the Commencement Date.

No other Liability

(d) Except as provided by paragraphs ((b)) and ((c)), the Lessor has no liability to the Lessee for losses, costs, liabilities, expenses and damages incurred in relation to Pollutants on, in or under or in the vicinity of the Land.

Environmental Indemnity by the Lessee

(e) Subject to paragraph ((f)) and ((g)), the Lessee agrees to indemnify and hold the Lessor harmless from and against all Environmental Costs.

Limitation

(f) The Lessee has liability under paragraph ((e)) only to the extent that any Environmental Cost relates to Pollutants which are present in, under or on the Land or any land after the Commencement Date and which are so present as a result of the occupation of the Land by the Lessee.

No other Liability

(g) Except as provided by paragraph ((e)) and ((f)), the Lessee has no liability to the Lessor for losses, costs, liabilities, expenses and damages incurred in relation to Pollutants on, in or under or in the vicinity of the Land.

No Adverse Action

(h) Unless required to do so by law or where necessary to prevent or minimise any injury to health, Lessee will not knowingly take any action after Commencement Date which will or could affect Lessor’s liability under paragraph ((b)).

Procedure for Indemnification

(i) Without limiting clause 4.8((b)) of this Lease, the Lessee will immediately inform Lessor and keep Lessor informed in writing giving full details as

for as reasonably practicable as soon as Lessee becomes aware of any actual or potential Environmental Cost.

UST

(j) Notwithstanding anything to the contrary in paragraph ((h)), the Lessee may, with the prior written approval of the Lessor,

(1) install; and

(2) use;

underground fuel storage tanks at the Premises. The Lessor will not unreasonably withhold such approval, and will not withhold such approval in respect of any particular tank if the Lessee certifies in writing to the Lessor that it has obtained all necessary consents and approvals (including development consents) for the installation and use of the tank. The Lessee will install and use any such tank(s) in accordance with all such consents and approvals. The Lessee will, at no cost to the Lessor, carry out or cause to be carried out a written report on the condition and suitability for use of each such tank (including, but not limited to, its structural integrity) at intervals of not less than three years from the Commencement Date. The Lessee will promptly supply to the Lessor a copy of each such report. The Lessee will comply with any duties imposed on it under section 60 of the *Contaminated Land Management Act 1997 (NSW)* in relation to the tank. The Lessee will comply at no cost to the Lessor with all reasonable requests of the Lessor in relation to the tank and arising from the report. Clause 5.6(j) is subject to the operation of clause 5.6(b) and does not limit the indemnity given by the Lessor under clause 5.6(b)

5.7 Fitout Security Deposit

(a) The Lessee must pay to the Manager an amount of $5,000 as a security deposit ("Security Deposit") for the performance by the Lessee of its obligations in relation to the fitting out of the Premises. The Security Deposit:

(1) will be held by the Manager on behalf of the Lessee in accordance with the provisions of this clause; and

(2) may be applied by the Lessor or the Manager to rectify any default of the Lessee pursuant to sub-clause (b).

(b) Prior to occupation of the Premises by the Lessee, the Lessee must attend a meeting with the Lessor and/or the Manager and at that meeting must deliver to the Lessor or the Manager the following:

(1) certificates and approvals from all relevant authorities authorising the Lessee to occupy the Premises;

(2) certification (in a form reasonably acceptable to the Lessor) from a contractor nominated or approved by the Lessor acting reasonably that all services have been installed in the Premises in accordance with the requirements of all relevant authorities and are compliant with the base building services;

(3) two sets (one being a sepia and paper copy and one being C.A.D. copy) of all "as installed" drawings for all services in the Premises including without limiting the generality air-conditioning air balance data and partition layout. The C.A.D. copy must be provided as a 3.5" DOS floppy disk in the following format (in descending order of preference):

A. Microstation DGN;

B. Autocad DWG; or

C. Autocad DXF; and

(4) copies of all services warranties, guarantees and contractual maintenance obligation in relation to the fitout.

(c) The Security Deposit or so much thereof as has not been utilised by the Lessor or the Manager pursuant to sub-clause (a)(2) will be refunded to the Lessee on the first to occur of the following:

(1) the date the obligations of the Lessee in relation to the fitting out of the Premises and in particular sub-clause (b) have been completed and satisfied; and

(2) this Lease expires or is determined.

6. Insurance, Risk and Indemnity

6.1 Lessee to effect Insurance policy

(a) The Lessee must effect and keep current:

(1) a public liability insurance policy for the Premises and the Car Park in an amount not less than that in **Item 11** (or any higher amount determined in good faith by the Lessor and notified in writing to the Lessee) in respect of any single claim; and

(2) an industrial special risks policy in respect of the Lessee's Equipment for its full insurable value against all usual risks.

(b) Each insurance policy in sub-clause (a) must:

(1) be taken out in the name of the Lessee, note the Lessor as an insured and insure each of their insurable interests,

(2) be effected with a reputable insurer approved by the Lessor,

(3) cover the risks and indemnities in clauses 6.3 and 6.4,

(4) note that it shall not lapse, terminate, vary or forfeit without at least a month's prior written notice to the Manager,

(5) bear endorsement that notice of any occurrence given by one insured is deemed to be notice given by all insured parties and that breach of duty or failure by one insured to observe the conditions of the policy does not prejudice the rights of any other insured,

(6) provide that the insurer waives all claims against the Lessor, its agents, contractors, employees and officers (except to the extent that the claim being waived is caused by the negligence or wilful act or omission of the Lessor, its agents, contractors, employees or officers), and

(7) conform with the Lessor's reasonable requirements notified in writing to the Lessee.

(c) The Lessee must deliver to the Lessor adequate written evidence of the existence and contents of each policy immediately it is effected and of its currency by each anniversary of the date in **Item 6** and when reasonably required by the Lessor.

(d) The Lessee must give the insurer full and true information of all matters known to the Lessee (non-disclosure of which may prejudice the policy) and do all things necessary to provide any information or evidence to enable the Lessor to promptly recover any money due to the Lessor under any policy referred to in this Lease.

6.2 Lessee not to void insurances; extra premiums

(a) The Lessee must not cause the rate of any insurance premium relating to the Premises or the Complex to be increased, or prejudice or render void or voidable that insurance.

(b) If the Lessor approves (in its absolute discretion) any request of the Lessee whereby an insurable risk is increased, the Lessee must pay to it any extra premiums due to the increased risk.

6.3 Release of lessor and manager

The Lessee releases the Lessor and the Manager (and their respective agents, contractors and employees) from all actions, claims, demands and Liabilities arising from any damage, loss, death or injury occurring in the Complex or on the Land or on any land adjacent to or adjoining the Land, except to the extent that the same is caused by the negligence or wilful act or omission of the person seeking to be released.

6.4 Indemnities by lessee

Subject to clause 5.6(g) the Lessee indemnifies the Lessor and the Manager (and their respective agents, contractors and employees) against all Liabilities which the Lessor or the Manager (or their respective agents, contractors and employees) suffers or incurs arising out of the Lessee's Act or Omission, any act or omission of any kind by any trespasser (while that trespasser is in the Premises) or any Lessee's Equipment.

6.5 Any failure of services

(a) If any services provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises, the Complex or the Land (including, without limit, the Lessor's air-conditioning plant and equipment) malfunctions or fails then, subject to sub-clause (b):

(1) the Lessor is not liable for any resulting Liabilities suffered or incurred by the Lessee or the Lessee's Agents,

(2) the Lessee is not entitled to determine this Lease and has no right of abatement or set-off of Base Rent or other money, and

(3) the Lessee and the Lessee's Agents have no claim for compensation or damages against the Lessor.

(b) Despite sub-clause (a), where the Lessor's air-conditioning plant and equipment fails or malfunctions due to the Lessor's failure to comply with clause 2.4, the Lessee's rights (if any) against the Lessor are in damages only.

6.6 No liability for any losses caused by contractors

Despite any other provision in this Lease, the Lessor is not liable for:

(a) failure by any security organisation to prevent any unauthorised entry to the Complex or the Premises, or

(b) death, injury, loss or damage caused or contributed to by a contractor (or its agents, employees or sub-contractors), where the organisation or contractor has been engaged in good faith by or on behalf of the Lessor and the Lessor reasonably believes it is reputable.

6.7 Lessee's obligations at own risk and expense

Unless this Lease expressly provides otherwise in a particular provision, any act, matter or thing which the Lessee is obliged, required or permitted to do or effect under this Lease, the Lessee's Equipment and the use and occupation of the Premises by the Lessee are all at the sole risk, cost and expense of the Lessee.

7. Lessor's General Rights

7.1 Lessor's right to inspect and show premises

The Lessor may at all reasonable times on reasonable notice and accompanied by a representative of the Lessee if the Lessee offers to make a representative available at a reasonable time enter the Premises:

(a) to inspect them to ascertain their repair, condition and value or to determine if the Lessee is in breach,

(b) to show them to prospective purchasers of the Land or the Complex,

(c) to show them to prospective tenants during the last year of the Term (unless the Lessee is then entitled to a lease of the Premises for a further term) and during any holding over,

(d) to inspect them for the purpose of carrying out environmental audits, and

(e) to inspect them for the purpose of carrying out investigations in relation to possible Contamination.

In having access to the Premises under this clause 7.1 the Lessor must not interfere with the Lessee's use of the Premises more than is reasonably necessary in the circumstances.

The obligation in this clause 7.1(a) for the Lessor to be accompanied by a representative of the Lessee does not apply in the case of an emergency or where the Lessee's representative is not available at the appointed time.

7.2 Access for maintenance and authority requirements

(a) The Lessor may on reasonable notice and accompanied by a representative of the Lessee if the Lessee offers to make a representative available at a reasonable time enter the Premises with materials and equipment to:

(1) clean, install, inspect, change, maintain, repair, remove or use any part of the Complex (other than the Premises) and the Lessor's plant, equipment and services in or adjacent to the Premises and the fabric or structure of the Complex;

(2) carry out works consented to by the Lessee acting reasonably;

(3) carry out any maintenance or repairs to the Premises; and

(4) comply with any law, direction, notice, order, requirement or request for which the Lessee is not liable under this Lease.

The obligation in this clause 7.2(a) for the Lessor to be accompanied by a representative of the Lessee does not apply in the case of an emergency or where the Lessee's representative is not available at the appointed time.

(b) Under sub-clause (a), the Lessor must not interfere with the Lessee's use of the Premises more than is reasonably necessary and must remove resulting rubbish and leave the parts of the Premises used clean and in good condition.

7.3 For sale notices

The Lessor may from time to time affix on the Complex and the Premises "For Sale" and "For Lease" signs. The Lessee must not move, remove or alter any such signs.

7.4 Easements and rights of support

(a) The Lessor may grant rights of support or easements to or enter into any agreement with any person interested in any land or improvement near the Land or any authority, to provide services for or access to the Complex, the Land or nearby land or to support any structure at any time on the Land or on nearby land.

(b) Despite sub-clause (a), the Lessor must not without the Lessee's written consent enter into any agreement derogating substantially from the Lessee's rights in the Premises under this Lease. The Lessee and any Covenantor must (at the Lessor's request and at its reasonable cost) promptly withdraw any caveat and execute any consents or other documents, to enable the Lessor to exercise its rights under this clause.

7.5 Damage by lessee to the complex or land

The Lessor may make good any damage to the Complex or the Land caused or contributed to by the Lessee's Act or Omission where the Lessee has failed to make good such damage within a reasonable time after notice from the Lessor requiring it to do so and the Lessee must pay to the Lessor the cost of the making good.

8. Transfer, Sub-Letting, Sale Of Shares Etc

8.1 Transfer, sub-letting, sharing possession, etc

The Lessee must not transfer, sub-let, part with or share the possession of, grant any licence affecting, or otherwise deal with or dispose of the Premises (or any part of the Premises) or the Lessee's interest under this Lease unless the following provisions of this clause are satisfied:

(a) **notice to lessor**: the Lessee gives the Lessor not less than 14 day's prior notice of its desire to deal with the Premises, details of the parties, documentation and other relevant circumstances;

(b) **not used**

(c) **no default**: the Lessee is not in default under this Lease;

(d) **lessor's requirements**: the Lessee transfers, sub-leases or grants a licence to:

(1) **a transferee, sub-lessee or licensee** who satisfies the Lessor acting reasonably that:

A. he is a respectable, responsible and solvent person of comparable financial standing to the Lessee, capable of performing the Lessee's agreements under this Lease, and

B. his proposed occupation and business would involve no higher security risk to or loss of amenity within the Complex than the Lessee's occupation and business;

(2) **a transferee** who enters into a deed with the Lessor in the form reasonably required by the Lessor (containing an agreement that he will perform the Lessee's agreements in this Lease) and who procures for the Lessor the agreements, indemnities and bank and personal guarantees reasonably required by the Lessor;

(3) **a sub-lessee or licensee** who enters into a deed with the Lessor containing agreements reasonably required by the Lessor,

including agreements that the Lessor's consent to the sub-lease or licence is without prejudice to its rights under this Lease, that the sub-lease or licence immediately terminates on the termination of this Lease (unless the Lessor otherwise determines) and that the sub-lessee or licensee must not grant a sub-lease or licence or part with or share the possession of his premises or transfer his sub-lease or licence;

(e) **deed with lessor**: the Lessee deals (other than by transfer, sub-lease or licence) with a person who enters into a deed with the Lessor in the form and containing the agreements, indemnities and guarantees reasonably required by the Lessor;

(f) **lessee pays lessor's costs**: the Lessee pays to the Manager within TEN (10) Business Days of notice, the Lessor's reasonable costs (including legal costs) and disbursements of and incidental to the matters referred to in this clause;

(g) **lessor's requirements on documentation**: the Lessee, transferee, sub-lessee, licensee and any other party to the transaction strictly comply with the Lessor's reasonable requirements in relation to drawing, stamping and registering the transaction documentation; and

(h) **sub-lease market rent**: in the case of a sub-lease, the Lessee provides to the Lessor a written acknowledgment that the rent payable pursuant to the sub-lease is not a market rent.

8.1A Routine Sub-Leases

The Lessor acknowledges that it is the Lessee's intention to operate the Premises as a telehouse facility which involves the sub-leasing or licensing of parts of the Premises to sub-tenants or licensees who wish to use the telecommunication and other facilities offered by the Lessee in the Premises. Clause 8.1 does not apply to a sub-lease or licence where:

(a) the Lessor has approved the form of the "standard" lease or licence upon which the Lessee sub-leases or licences parts of the Premises pursuant to this clause 8.1A;

(b) the terms and conditions of the relevant sub-lease or licence are substantially those of the standard sub-lease or licence approved by the Lessor under clause 8.1A(a);

(c) the sub-lease or licence terminates upon or prior to termination or expiration of this Lease;

(d) the area to be sub-leased or licensed under any one particular sublease or licence does not exceed 20% of the Gross Lettable Area (as determined in

accordance with the Property Council of Australia's method of measurement for Gross Lettable Area – March 1997) of the Premises; and

(e) the sub-tenant or licensee proposes to use the Premises for any of the purposes referred to in this clause 8.1A.

8.1B Lessee released on assignment

Subject to clause 8.1C, if the Lessee assigns this Lease in accordance with the requirements of clause 8.1 and the assignee furnishes a bond in accordance with clause 11 to replace the bond provided on behalf of the Lessee, the Lessor and the Lessee shall be deemed to have released each other from all further obligations under this Lease and will each sign such documents and take such other steps as may be reasonably required by the other to effect such release. The Lessor must return any bond provided by the Lessee under clause 11 upon receipt of a replacement bond provided by the assignee in accordance with clause 11.

8.1C Related corporations

The provisions of clause 8.1 do not apply to any transfer, subletting or other dealing referred to in that clause where the transfer, subletting or other dealing is to a company which is a related body corporate of the Lessee within the meaning of the Corporations Law provided that such related body corporate provides to the Lessor a bond in accordance with clause 11 to replace the bond provided on behalf of the Lessee. The Lessor must return any bond provided by the Lessee under clause 11 upon receipt of a replacement bond provided by the related body corporate in accordance with clause 11. The Lessee shall not be deemed to have been released from its obligations under this Lease pursuant to clause 8.1B where the assignee is a related body corporate of the Lessee unless the requirements of clause 8.1 are satisfied.

8.2 Limits on mortgage of lease

(a) The Lessee must not charge, mortgage or encumber this Lease or the interest of the Lessee under this Lease or in the Premises.

(b) Despite sub-clause (a), the Lessee may grant a mortgage or charge over part or all of its assets and undertaking, provided that the mortgagee or chargee first enters into a deed in the form the Lessor reasonably requires, and the Lessee has paid the Lessor's reasonable costs (including legal costs) and expenses of and incidental to the deed.

8.3 Sale of shares – default unless lessor's requirements met

(a) Sub-clause (c) applies if the Lessee is a corporation whose shares are not listed on the Australian Stock Exchange Limited's official list or a foreign company whose securities are not quoted for trading on a stock exchange or in a public securities market.

(b) In sub-clause (c):

(1) **PrescribedRights** means more than 49% of voting, income or capital participation rights in the Lessee; and

(2) **Transferor** means any person or persons who beneficially hold or control the Prescribed Rights (or more than 49% of voting, income or capital participation rights in any other company or companies which beneficially hold or control the Prescribed Rights) as at the date in **Item 6** or, if this Lease has been transferred to the Lessee, as at the transfer date.

(c) The Lessee is in default under this Lease if the Transferor transfers, mortgages, charges (other than in accordance with clause 8.2(b)), grants any option or other rights over, disposes of or ceases to be beneficially entitled to the whole or any part of the Prescribed Rights, unless the following are satisfied:

(1) **notice**: the Lessee gives the Lessor not less than a month's prior notice of its desire to deal with the Prescribed Rights;

(2) **no default**: the Lessee is not in default under this Lease;

(3) **lessor's requirements**: the Transferor deals with the whole or part of the Prescribed Rights to a person (**Transferee**) who:

A. satisfies the Lessor acting reasonably that the Transferee's interest in the Prescribed Rights involves no higher security risk to or loss of amenity in the Complex than the Transferor's interest in the Prescribed Rights; and

B. procures for the Lessor the agreements, indemnities and guarantees reasonably required by the Lessor; and

(4) **lessee pays lessor's costs**: the Lessee pays to the Manager within TEN (10) Business Days of notice, the Lessor's reasonable costs (including legal costs) and disbursements of and incidental to the matters referred to in this clause.

(d) Despite anything else in this clause 8.3, this clause 8.3 does not apply where the Transferee is a related body corporate within the meaning of the Corporations Law of the Lessee or the Transferor.

8.4 Assignment and share transfer – costs and documents

The Lessee must pay the Lessor's reasonable costs (including legal costs) and disbursements of and incidental to any proposed dealing under clauses 8.1 or 8.3,

even if the Lessee (or other party) does not comply with clauses 8.1 or 8.3 or if the proposed dealing does not proceed.

9. Termination And Yielding Up Of Premises

9.1 Effect of resumption, destruction or damage

Clause 9.2 only applies if:

(a) the Premises or the Complex is resumed, or

(b) the whole or any part of the Complex is destroyed or damaged,

so as to render the Premises during the Term inaccessible or substantially unfit for the Lessee's use and occupation, so as to deprive the Lessee of use of a substantial part of the Premises during the Term or so as to render the reconstruction of the Complex in its previous form impracticable or undesirable in the Lessor's opinion.

9.2 Lease may be terminated without compensation; abatement

(a) In the circumstances in clause 9.1, this Lease may (subject to sub-clause (c)) be terminated by notice by either Lessor or Lessee.

(b) No liability attaches to any party as a result of termination under this clause, but the termination does not prejudice the Lessor's and the Lessee's rights in respect of any prior breach or matter and does not limit any party's right to compensation from any resuming authority.

(c) When any damage or destruction in clause 9.1 occurs, the Lessee is only entitled to terminate this Lease pursuant to sub-clause (a) if the Lessor fails to rebuild or make the Premises accessible within a reasonable time (having regard to the damage done and the work required) after the Lessee's notice requesting the Lessor to do so.

(d) Nothing in this Lease requires the Lessor to rebuild or make the Premises accessible or fit for the Lessee's use.

(e) When any damage or destruction in clause 9.1 occurs, the Base Rent and the Lessee's Proportion of Outgoings (or a proportionate part according to the Lessor's determination in good faith of the extent of the damage) will abate until the Premises have been rebuilt or made accessible or fit for the Lessee's use or this Lease is terminated under this clause.

(f) Any dispute about the duration or extent of any abatement under sub-clause (e) must be referred to the decision of a single expert nominated (at the request of the Lessor or the Lessee) by the President of the API.

(g) The expert must be a full member of the API with at least FIVE (5) years' practice as a registered valuer in New South Wales, must act as an expert and not as an arbitrator, must make his determination promptly and must give notice to the parties of his determination. The expert's determination (including as to payment of his costs) is final and binding (except for manifest error).

(h) Until the dispute is determined, the Lessee must pay Base Rent and Lessee's Proportion of Outgoings in the amounts determined by the Lessor under sub-clause (e). Within TEN (10) Business Days of the expert notifying the Lessor and the Lessee of his determination, any necessary adjustment must be made between the Lessee and the Lessor.

9.3 Removal of lessee's equipment

(a) **Right/obligation to remove**: The Lessee:

(1) may at any time prior to the expiration of this Lease, and

(2) must immediately prior to or at the expiration or surrender of this Lease (or if this Lease is otherwise sooner determined, within TEN (10) Business Days after the sooner determination),

remove all Lessee's Equipment from the Complex.

(3) Notwithstanding paragraphs (a)(1) and (2), immediately prior to or at the expiration or surrender of this Lease, the Lessor can elect to require the Lessee not to remove the Lessee's Equipment (or any part of it). If the Lessor so elects, the Lessee must not remove from the Premises the Lessee's Equipment (or any part of it) and such Lessee's Equipment (or any part of it) becomes the property of the Lessor. This paragraph does not apply in respect of items which do not form an integral part of the Complex and which can readily be removed by the Lessee and used elsewhere.

(b) **Conditions applying to removal**: Subject to paragraph (a)(3), in such removal, the Lessee must:

(1) do no damage to the Complex (or immediately make good to the Lessor's satisfaction any damage caused in removing the Lessee's Equipment),

(2) make good to the Lessor's satisfaction any damage caused in affixing or installing the Lessee's Equipment,

(3) take proper steps to prevent damage and excess wear to all relevant floors and floor coverings in the Complex,

(4) remove all rubbish and leave the parts of the Complex used in removing the Lessee's Equipment clean and in good condition, and

(5) comply with the Lessor's then usual reasonable conditions in respect of removal and make good works.

(c) **Lessor's approval of certain removal works**: The Lessee must have the removal of the Lessee's Equipment carried out by contractors approved by the Lessor and in accordance with procedures approved by it.

(d) **Lessee to submit details of removal work**: The Lessee must submit details of the proposed removal works for the Lessor's approval not less than TWO (2) months before the date in **Item 7**.

(e) **Conditions applying to lessee's entry if lease determined**: The Lessee and the Lessee's Agents may only enter the Premises after the expiration or sooner determination of this Lease to comply with this clause and clause 9.5. Entry may only be effected during Established Complex Hours, with the Lessor's prior consent and on the basis that Part 6 and sub-clause (b) apply and that the policies in clause 6.1(a) are current.

9.4 Lessee's equipment not removed

(a) If the Lessee does not remove and carry away the Lessee's Equipment in accordance with clause 9.3, then (subject to clause 9.6(b)) the interest of the Lessee in the Lessee's Equipment not removed immediately passes to the Lessor.

(b) Where the Lessee's interest in any Lessee's Equipment has passed to the Lessor, the Lessor may leave the Lessee's Equipment on the Premises or (at the Lessee's expense) remove and dispose of the equipment in any way the Lessor thinks fit and repair any damage caused, at the Lessee's cost.

(c) The Lessee indemnifies the Lessor against any Liabilities suffered or incurred by the Lessor in respect of or arising out of sub-clauses (a) and (b).

9.5 Premises to be in good condition on yielding up

(a) The Lessee must immediately on the expiration or sooner determination of this Lease deliver back possession of the Premises to the Lessor clean and free from rubbish and in good and substantial repair, order and condition in accordance with the Lessee's agreements for maintenance, repair and condition in this Lease.

(b) **Services** means that part of the services and facilities (including air-conditioning thermostats, ducts and outlets, fire sprinkler heads and piping, fire hose reels and fire hydrants, security and fire alarm equipment,

lighting, central electrical switching arrangement, emergency lighting and exit signs) provided or installed by or on behalf of the Lessor in the Premises or for the benefit of the Premises in any floor of the Premises or in any ceiling cavity or walls adjoining the Premises.

(c) **Fitout/Occupation Date** means the earlier of:

(1) the date on which possession of the Premises was first granted (whether under this Lease or otherwise) to the Lessee or the Lessee's Predecessors, and

(2) the date of commencement of the first fit out of the Premises by or on behalf of the Lessee's Predecessors or the Lessee.

(d) The Lessee must put all the Services into the same good repair, order and condition as existed prior to the Fitout/Occupation Date.

(e) Without limiting or being limited by sub-clauses (a) and (d), the Lessee must:

(1) **replace services:** put all the Services into either the same positions as existed prior to the Fitout/Occupation Date or (if required by the Lessor) into such other positions as are notified in writing by the Lessor, provided that the cost to the Lessee of putting the Services in the other positions must not be greater than the cost (estimated by the Lessor, in good faith) of putting the Services into the positions which existed prior to the Fitout/Occupation Date. The Lessee's obligation includes installing new cables, conduits, wires, ducting, piping and pipes (of a standard not less than that then existing) to link up the Services so that they are operational once in the required positions.

(2) **remove cables:** remove all cables, conduits, wires, ducting, piping and pipes in or servicing the Premises installed by or on behalf of the Lessee or the Lessee's Predecessors (or any sub-lessee or licensee of any of them), other than those necessary for the Services to be operational after the Lessee has complied with paragraph (1).

(3) **remove partitions:** remove all partitions and intra-tenancy walls installed by or on behalf of the Lessee or the Lessee's Predecessors (or any sub-lessee or licensee of any of them).

(4) **re-balance air-conditioning:** following the removal of all of the Lessee's Equipment, partitions and intra-tenancy walls, re-balance the air-conditioning plant and equipment exclusively serving the Premises as appropriate to the then relevant standard to service the Premises with an open-plan layout.

(5) **reinstate holes in structure:** make good and reinstate the structure of any part of the Complex into which any hole has been made by or on behalf of the Lessee, the Lessee's Agents or any of the Lessee's Predecessors.

(6) **repair/replace ceiling tiles:** either put the ceiling tiles into good and substantial repair, order and condition (fair wear and tear excepted) or replace the ceiling tiles (or such of the ceiling tiles that cannot be repaired) with new ceiling tiles approved by the Lessor of a standard not less than that of the ceiling tiles then provided by the Lessor to premises in the Complex.

(7) **repair carpet:** either put the carpet into good and substantial repair, order and condition (including replacing to the Lessor's satisfaction all areas cut out) or replace that carpet with new carpet approved by the Lessor of a standard not less than that of the carpet then provided by the Lessor to premises in the Complex.

(8) **shampoo carpet:** have the carpet shampoo cleaned by a reputable contractor.

Clauses 9.5(e)(1)(3) and (4) do not apply if and to the extent that partitions and intra-tenancy walls installed by or on behalf of the Lessee or the Lessee's Predecessors (or any sub-lessee or licensee of any of them) will be used by the Lessor or a person who has entered into an agreement for lease or lease of the Premises from the Lessor.

(f) Nothing in this clause imposes any obligation on the Lessee to make good any damage caused by reasonable wear and tear, explosion, earthquake, aircraft or other aerial device, civil commotion, fire, flood, lightning, riot, storm, tempest, act of God or war.

(g) The Lessee must immediately repair any damage to the Complex arising out of any Lessee's Act or Omission under this clause. However, this sub-clause does not limit the Lessor's right under clause 7.6 to make good damage.

9.6 Not Used

9.7 Application of clauses 9.3 to 9.6

(a) If the Lessee has entered into or is legally entitled to a lease of the whole of the Premises for a further term after the expiration of this Lease, then clauses 9.3 to 9.6 (inclusive) do not apply to the extent that they relate to rights of the Lessor or obligations of the Lessee at or about the expiration of this Lease.

(b) Clauses 9.3 and 9.4 do not apply to any Lessee's Equipment transferred (with the Lessor's prior approval) to the Lessor or to a person who has entered into an agreement for lease or lease with the Lessor or to some recognised financial institution allowing its use by the person (provided that clause 5.4 has been complied with).

(c) Without limiting the continuing effect of any other provisions, clauses 9.3 to 9.6 (inclusive) continue to operate if this Lease expires or is terminated.

9.8 Holding over – monthly; lessee to apply for approval

(a) Subject to sub-clause (b), the Lessee must vacate the Premises at the expiration of the date in **Item 7.**

(b) With the Lessor's prior approval (given or withheld in its absolute discretion), the Lessee may continue to occupy the Premises beyond the date in **Item 7**. Such occupation is for a fixed term of ONE (1) month and then from month to month, on the provisions of this Lease (so far as applicable) and at a monthly rent which is a monthly proportion of the sum of the Base Rent current on the date in **Item 7** and the Lessee's Proportion of Outgoings.

(c) Without limiting clause 10.2, the tenancy in sub-clause (b) is determinable at any time by the Lessor or the Lessee by ONE (1) month's notice expiring on any day.

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10. Default And Re-Entry

10.1 Lessor's right to remedy defaults

(a) If the Lessee fails to pay, do or effect anything in accordance with this Lease, the Lessor may (after notice to the Lessee specifying the default, except where the Lessor perceives an emergency, when no notice is required) pay, do or effect the thing as if it were the Lessee and at the Lessee's cost. This clause does not affect the Lessor's other rights and remedies.

(b) The Lessor may enter and remain on the Premises to do or effect anything referred to in sub-clause (a) and the Lessee must pay to the Lessor the Lessor's costs and expenses incurred or paid in doing or effecting that thing.

10.2 Default or breach by lessee – re-entry

The Lessor may re-enter the Premises without prior notice or demand if:

(a) any money payable by the Lessee to the Lessor under this Lease is not paid within TEN (10) Business Days of the due date, or

(b) the Lessee breaches any provision of this Lease and, where the breach is capable of remedy, it has not been remedied to the Lessor's reasonable satisfaction within a reasonable time after service of notice on the Lessee specifying the breach and, where the breach is not capable of remedy, but the Lessor can reasonably be compensated for any damage suffered as a result of such breach, the Lessee has not within a reasonable time after service of notice on the Lessee specifying the breach, offered to pay such reasonable compensation to the Lessor, or

(c) an order is made or a resolution is effectively passed for winding up the Lessee or any Covenantor (being a corporation) or any act or event mentioned in Section 461(a)-(k) of the Corporations Law occurs in relation to the corporation.

Upon re-entry this Lease is determined. This clause is without prejudice to any claim or other remedy which the Lessor has or may have against the Lessee or any Covenantor in respect of any breach of this Lease. This clause has effect despite any other provision in this Lease.

10.3 Damages claimable by lessor

(a) If an event referred to in clause 10.2(a) or (b) occurs, the Lessee is in breach of a fundamental and essential term of this Lease.

(b) In addition to the Lessor's other rights and remedies, where the Lessor has re-entered the Premises pursuant to clause 10.2 or the Lessor accepts the Lessee's repudiation of this Lease, the Lessee shall be liable to the Lessor in damages for the Lessee's breach of the Lease.

(c) This clause does not limit any right of the Lessor to recover damages for any other loss. The Lessor's right to recover damages is not affected by the Lessor's acceptance of the Lessee's repudiation or by the parties' conduct constituting a surrender by operation of law.

10.4 No waiver

(a) Failure to exercise, delayed exercise or partial exercise of any available remedy or right does not waive any breach by a party.

(b) Waiver by a party of a particular breach is not a waiver of any other breach or default.

(c) Demand or acceptance by the Lessor of money payable under this Lease after the Lessee's breach or default does not prejudice any other right or remedy of the Lessor.

11. Bank Bond/Guarantee

11.1. Lessee to obtain unconditional bank bond

(a) On or by the date in **Item 6**, the Lessee must obtain and deliver to the Lessor an enforceable and irrevocable bond in favour of the Lessor (and its successors and assigns) given by an Australian domiciled bank carrying on business in Sydney (**Bank**) under which the Bank undertakes unconditionally on terms satisfactory to the Lessor to pay to the Lessor on demand any sum up to an aggregate of the Guaranteed Sum.

(b) If a payment is made to the Lessor after a demand under clause 11.2, the Lessee must within TEN (10) Business Days of being notified by the Lessor, obtain and deliver to the Lessor a further bond for the amount necessary to ensure that a bond or bonds are maintained which secure the Guaranteed Sum to the Lessor. The bond or bonds must not specify an expiry date.

(c) **Guaranteed Sum** means the amount (if any) specified in **Item 15** together with the amount of any further bond required to be obtained under clause 11.4.

11.2. Bond available to meet lessee's breaches

(a) The Guaranteed Sum (or any part of it, as determined by the Lessor but not exceeding, in aggregate, the Guaranteed Sum) is payable on the Lessor's demand. The Lessor may not make demand until the Lessee breaches this Lease and the Lessor has suffered loss as a result. The amount demanded by the Lessor must not exceed the Lessor's reasonable estimate of the amount of that loss.

(b) The Lessee irrevocably agrees that the Bank must act immediately on the Lessor's demand, without reference to the Lessee and even if the Lessee has instructed the Bank not to pay the Lessor.

(c) Acceptance of the bond or payment under it does not limit the Lessor's rights or waive any breach by the Lessee.

11.3. Duration of bond

The bond must continue in force until the earliest of:

(a) payment to the Lessor by the Bank of the whole of the amount secured by the bond; or

(b) the receipt by the Bank of either a notice from the Lessor that the bond is no longer required or the bond (returned with the Lessor's consent).

11.4. Further bond on base rent increases

(a) If the Base Rent is increased during the Term, the Guaranteed Sum automatically increases by the same proportion as the increase in the Base Rent (rounded up to the nearest dollar).

(b) Within TEN (10) Business Days of the Guaranteed Sum increasing, the Lessee must obtain and deliver to the Lessor a further bond complying with clause 11.1 for the amount necessary to ensure that a bond or bonds are maintained which secure the then current Guaranteed Sum to the Lessor.

12. Covenantor

12.1. Covenant – joint and several liability

In consideration of the Lessor's entry into this Lease at the Covenantor's request (or for other valuable consideration given by the Lessor), the Covenantor unconditionally and irrevocably agrees that it is liable to the Lessor for the Lessee's obligations to the Lessor under or arising out of this Lease. Each Covenantor is liable individually and collectively with the Lessee and each other Covenantor to the Lessor.

12.2. Indemnities

(a) The Covenantor indemnifies the Lessor against all Liabilities the Lessor suffers or incurs if the Lessee fails to comply with this Lease, if any provision of this Lease is not enforceable by the Lessor or if this Lease is disclaimed by the Lessee's liquidator or trustee in bankruptcy.

(b) No disclaimer relieves the Covenantor of its obligations under this indemnity. Each indemnity survives any termination of this Lease.

12.3. Principal obligations

(a) The obligations of each Covenantor under this Lease are principal obligations and are not collateral or secondary to any other obligations (including those of the Lessee) and are not affected by any bond, guarantee, indemnity, judgment security or right (**Security**) which the Lessor may hold at any time in respect of the Lessee's liability.

(b) The Lessor need not realise for the benefit of the Covenantor any Security held by the Lessor in respect of the Lessee or any funds or assets that the Lessor may be entitled to receive or claim on.

(c) The Lessor may vary, exchange, renew, release or refuse to complete or to enforce any Security held by the Lessor.

12.4. Continuing liability of covenantor

Each Covenantor's liability under this Lease is a continuing liability and is not affected by any act, matter or thing (whether or not done with the Covenantor's consent) including, without limit:

(a) expiration or termination (including by re-entry) of this Lease;

(b) the death, bankruptcy, assignment for the benefit of creditors, arrangement with creditors, winding-up, reconstruction, administration, receivership, liquidation, striking off or other incapacity of the Lessee or any other Covenantor;

(c) the Lessor becoming a party to or bound by any compromise, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction relating to the Lessee, any other Covenantor or any other person;

(d) the grant of time, credit or other indulgence to the Lessee, the Covenantor or any other person;

(e) the whole or partial release or discharge of the Lessee or any other Covenantor from any obligation;

(f) any transaction, arrangement or agreement in respect of this Lease or otherwise between any of the parties or with any other person;

(g) the Lessor failing to exercise, waiving or deferring any or all of its powers, rights or remedies under this Lease;

(h) any act or omission contrary to the Covenantor's interests by the Lessor or any other person or any failure to give effective notice of any breach of this Lease;

(i) obtaining any judgment or order against any party;

(j) any actual or alleged set-off, defence, counter-claim or other deduction on the part of the Lessee or any Covenantor;

(k) any payment made to the Lessor and later avoided;

(l) any rent review or increase in amounts payable by the Lessee under this Lease, any variation of this Lease, any holding over, any consent or approval given by the Lessor pursuant to this Lease or any transfer or other dealing in respect of this Lease; or

(m) any other act, default, delay, event, mistake or omission of the Lessor or any other person whereby the Covenantor's liability to the Lessor would, but for this clause, have been affected.

12.5. Assignment of benefit of covenant

(a) The Lessor may transfer the benefit of the Covenantor's agreements to any transferee of the Lessor's interest in the Land, this Lease or the reversion of this Lease.

(b) Such transfer in no way affects the Covenantor's agreements under this Lease which shall then be to the transferee (or in the case of a partial transfer, to the Lessor and the transferee).

(c) The Covenantor must (if requested by the Lessor and at its reasonable expense) promptly enter into a deed with any transferee from the Lessor in terms substantially similar to this Part.

12.6. No proof in estate of lessee in competition with lessor

(a) If any bankruptcy, assignment for the benefit of creditors, arrangement with creditors, winding-up, liquidation, receivership or other demise of the Lessee (**Demise**) results in claims by creditors, the Covenantor must not prove or claim in competition with the Lessor so as to diminish any distribution, dividend or payment which (but for such claim) the Lessor would be entitled to receive arising out of the Demise.

(b) Despite sub-clause (a), the Covenantor must, if required by the Lessor, prove or claim in the Demise, and any amount received by the Covenantor from any distribution, dividend or payment will be received and held by the Covenantor in trust for the Lessor and must be paid to the Lessor on demand in reduction of the amount owing to the Lessor by the Lessee or the Covenantor.

12.7. Warranties by covenantor

Each Covenantor which is a corporation or trustee warrants that:

(a) it has full and unrestricted power and authority to agree and indemnify as provided in this Lease and to execute this Lease, and

(b) its entry into this Lease is part of the proper administration or purposes of the corporation or trust and is for the commercial benefit of the corporation or trust.

12.8. Covenantor to pay lessor's costs

The Covenantor must pay within TEN (10) Business Days of written demand the Lessor's reasonable legal and other expenses (on an indemnity basis) incurred in the exercise or attempted exercise of any power, remedy or right conferred on the Lessor by this Part.

13. Option for Further Term

13.1. Right to lease for further term

If a further term is set out in **Item 8**, the Lessee may lease the whole of the Premises for the Further Term subject to this Part.

13.2. Conditions for grant of further term

(a) The Lessor must grant to the Lessee and the Lessee must take a lease of the whole of the Premises for the Further Term at an initial Base Rent determined under clause 13.3, provided that all the following are satisfied:

(1) **notice**: the Lessee serves on the Lessor not more than TWELVE (12) months and not less than NINE (9) months before the Termination Date a notice requesting the grant of the lease for the Further Term ("**Lessee's Notice**");

(2) **payments punctually made**: the Rent and other money payable to the Lessor under this Lease have been duly and punctually paid;

(3) **no breach**: the Lessee has not persistently been in breach of this Lease during its Term (whether or not the Lessee is in breach of this Lease at the date of service of the Lessee's Notice or at any subsequent time during the Term); and

(4) **occupation**: the Lessee occupies the Premises at the Termination Date.

(b) If the Lessor does not intend to grant to the Lessee the lease for the Further Term due to any breach of this Lease by the Lessee of which the Lessor is aware at the date of service of the Lessee's Notice, the Lessor must serve on the Lessee within FOURTEEN (14) days of receipt of the Lessee's Notice, a notice as required under section 133E of the Conveyancing Act specifying the Lessee's breach.

13.3. Initial base rent

(a) If the New Lease Commencement Date is a Review Date:

(1) The initial Base Rent is the amount agreed or determined as the Current Base Rent as at the New Lease Commencement Date.

(2) The Base Rent agreed or determined must not be less than the Base Rent current at the Termination Date.

(3) If the Base Rent has not been agreed or determined by the New Lease Commencement Date, the Base Rent notified by the Lessor to the Lessee pursuant to clause 2 of **Schedule 2** shall apply unless and until there is an agreement or determination to the contrary pursuant to **Schedule 2**.

(b) If the New Lease Commencement Date is not a Review Date, the initial Base Rent is the Base Rent current at the Termination Date.

13.4. Terms of further lease

(a) Subject to this Pan, the lease for the Further Term must contain the provisions of this Lease, except that the Lessor may require any provision to be amended or added in the further lease to reflect changes in the improvements comprising the Complex or its management or otherwise to incorporate provisions which the Lessor would in the first instance require (in good faith) from any prospective lessee if the Lessee had not exercised its right to the lease for the Further Term.

(b) The relevant parts of the reference schedule of the lease for the Further Term must be completed appropriately having regard to:

(1) the criteria for adjustment of public liability insurance under clause 6.1(a); and

(2) the current name, residential address and occupation or registered office (as the case may require) of the Covenantor (if any).

(c) The further lease must contain a right for a further lease(s) for the further term(s) (if any) set out in the remaining applicable paragraph(s) in **Item 8** in terms similar to this Part except that any lease for the last of the further terms must not contain this Part.

13.5. Execution of further lease

The Lessee and the Covenantor (if any) must execute the lease for the Further Term and return it to the Manager within ONE (1) month of receipt of the lease by the Lessee.

13.6. Bond on grant of further term

(a) This clause applies if a lease for the Further Term is granted under this Part and a bond is required under this Lease at the Termination Date.

(b) The Lessee must obtain and deliver to the Lessor an enforceable and irrevocable bond in favour of the Lessor (and its successors and assigns) and otherwise complying with clause 11.1(a). The bond must be expressed to apply from the New Lease Commencement Date to the date THREE (3) months after the date of expiration of the Further Term.

(c) On and from the New Lease Commencement Date, the initial "**Guaranteed Sum**" means the greater of the Guaranteed Sum current at the Termination Date and the Guaranteed Proportion of the initial Base Rent for the Further Term (agreed or determined under clause 13.3). The "**Guaranteed Proportion**" is the proportion obtained by dividing the number set out in **Item l5(b)** by 12 and multiplying the result by l00. The Guaranteed Sum determined in accordance with this clause must be inserted in the relevant item of the reference schedule of the lease for the Further Term.

(d) The fresh bond must be delivered to the Lessor no later than TEN (10) Business Days after the later of the New Lease Commencement Date and the date on which the initial Base Rent for the Further Term is agreed or determined.

(e) Despite sub-clauses (b) to (d), if the initial Base Rent for the Further Term has not been agreed or determined by the New Lease Commencement Date, then the Lessee must obtain and deliver to the Lessor on or by the New Lease Commencement Date an enforceable and irrevocable bond in favour of the Lessor (and its successors and assigns) for the Guaranteed Sum current at the Termination Date and otherwise complying with clause 11.1(8). The bond must be expressed to apply from the New Lease Commencement Date to the date THREE (3) months after the date of expiration of the Further Term.

(f) The Lessor must return to the Lessee the bond provided under sub-clause (e) on receipt of the bond provided under sub-clauses (b) to (d).

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14. Limited recourse against responsibility entity: Lend Lease Real Estate Investments Limited

(a) "**Responsible Entity**" means Lend Lease Real Estate Investments Limited (as responsible entity and trustee of the registered managed investment scheme known as Australian Prime Property Fund Industrial).

(b) The Responsible Entity enters into this Lease only in its capacity as trustee of the Australian Prime Property Fund Industrial (the "**Scheme**") and in no other capacity. A liability arising under or in connection with this Lease is limited to and can be enforced against the Responsible Entity only to the extent to which it can be satisfied out of property of the Scheme out of which the Responsible Entity is actually indemnified for the liability. This limitation of the Responsible Entity's liability applies despite any other provision of this Lease and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Lease.

(c) The parties, other than the Responsible Entity, may not sue the Responsible Entity in any capacity other than as trustee of the Scheme, including seeking the appointment of a receiver (except in relation to property of the Scheme), a liquidator, an administrator or any similar person to the Responsible Entity or prove in any liquidation, administration or arrangement of or affecting the Responsible Entity (except in relation to property of the Scheme).

(d) The provisions of this clause shall not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because under the constitution establishing the Scheme or by operation of law there is a reduction in the extent of the Responsible Entity's indemnification out of the assets of the Scheme, as a result of the Responsible Entity's fraud, negligence or breach of trust.

Schedule 1 – Particulars of Outgoings

SECTION A – OUTGOINGS

Outgoings include (without limit):

1 Rates and Taxes

Rates and taxes (including land tax, calculated on the taxable value of the Land on a single holding basis, but excluding the Lessor's income tax or capital gains tax), assessments and charges (including charges for water and sewerage usage, drainage, trade waste and fire services), fees and levies and impositions and duties of any authority, body, department, government or instrumentality assessed, charged, imposed or levied in respect of the Complex, the Land or services to the Complex or the Land (regardless of ownership) or assessed, charged, imposed or levied in connection with the management or operation of the Complex or the Land and bank charges incurred in connection with the management and operation of the Complex (including bank debits tax).

2 Insurance

Insurance premiums, stamp duty and brokers fees for:

(a) insurance of the Complex (but not to the extent that such insurance exceeds its full insurable reinstatement value),

(b) insurance of the Complex and the Lessor and the Manager against other risks relating to the Lessor's interest in the Complex as the Lessor deems necessary or desirable (including public liability, consequential and economic loss, machinery breakdown and any other insurance incidental to ownership, repair, maintenance, management and security of the Complex and the Land (or either of them)), and

(c) workers compensation insurance for people performing functions in relation to the Complex (where applicable, adjusted to reflect the proportion of time spent in relation to the Complex and to other activities).

3 Repairs and maintenance

Costs of maintaining and repairing (including repair by replacement of parts) the following in or of the Complex or the Land including but not limited to:

(a) air-conditioning plant and equipment, sprinkler and fire alarm installations, fire fighting equipment and security systems,

(b) mechanical, hydraulic, electrical and electronic equipment,

(c) toilets, basins, taps, sanitary stacks, fountains, pipes, plumbing, grease traps and associated appurtenances,

(d) switches, outlets, lights, conduits, wiring and other electrical appurtenances, and

(e) Common Areas, plant rooms, cleaners' rooms, security or fire control rooms, service ducts and risers (and fixtures, fittings and furnishings in them) (including painting them).

4 Cleaning and other costs

Costs for cleaning all interior and exterior surfaces of windows in the Complex, the surface of the facade of the Complex and the items in clauses 3(c) and (e) of Section A of this Schedule, and costs in respect of:

(a) toilet and washroom requisites in the Complex,

(b) landscaping, planting, weeding and maintaining any gardens, lawns, plants and flowers in Common Areas,

(c) any licence or permit for disposal of waste from the Complex, and

(d) removing graffiti from the Complex.

5 Services

Costs in respect of:

(a) liquid waste removal, garbage removal, excess water charges and similar services not within clause 1 of Section A,

(b) security, control, tenant liaison services or operations management services for the Complex,

(c) control of pests in Common Areas and any safety or environmental audits for the Complex,

(d) the auditor's certificate pursuant to clause 3.3(b)(2),

(e) annual environmental, risk, fire and essential services audits undertaken in respect of the Complex, and

(f) all other services provided in respect of the Complex and the Land (or either of them).

6 Management

A management fee or charge to cover the Lessor's cost of having the Complex and the Land managed, which must not exceed the actual management fee or charge paid or payable by the Lessor to the Manager.

7 Energy costs

All costs for electricity, gas, oil and any other source or type of energy, power or fuel in respect of the Complex or the Land.

SECTION B – APPORTIONMENT OF OUTGOINGS

1 Where an amount included in Outgoings does not relate to the whole of the Land, the Lessee's Proportion of that amount is the amount calculated as follows:

$$A\% = \frac{B \times 100}{C}$$

where:

A = the Lessee's Proportion referred to in this clause;

B = the Area; and

C = the total gross lettable area of that part of the Complex to which the amount relates, measured in accordance with the principles for measurement of gross lettable area as published in the PCA publication "Method of Measurement for Lettable Area" (1997 Revision).

2 This section applies despite any other provision of this Lease.

Schedule 2 – Reviews of Base Rent

1 Interpretation and time to be of the essence

(a) In this Schedule:

(1) unless the context otherwise requires a reference to a clause is a reference to a clause in this Schedule.

(2) time is of the essence. Failure to observe any time limit in this Schedule is a failure to discharge the relevant obligation or exercise the relevant right.

(b) When agreed or determined in accordance with this Schedule, the Current Base Rent is binding on the parties to this Lease.

2 Reviews of base rent – lessor's notice

(a) The Lessor may at any time in the period commencing THREE (3) months before a Review Date and expiring on the next Review Date (or, if there is no following Review Date, the expiration of the Term), serve on the Lessee a notice reviewing the Base Rent to an amount which the Lessor determines to be the annual market rent of the Premises as at the subject Review Date.

(b) The amount notified in the Lessor's Notice is the Base Rent on and from the subject Review Date unless and until there is agreement or a determination to the contrary pursuant to this Schedule, at which time the agreed or determined amount will become the Base Rent payable on and from the subject Review Date.

(c) Despite sub-clause (b), if the Lessee serves notice in accordance with clause 4, then (on an interim basis) the Base Rent on and from the subject Review Date will be the greater of the Base Rent current immediately prior to the subject Review Date and NINETY per cent (90%) of the amount notified in the Lessor's Notice.

(d) The Lessee must pay that interim Base Rent until there is written agreement or a determination to the contrary under this Schedule.

(e) The Lessor's Notice is binding on the parties (except in the case of manifest typographical error). Except as provided in clause 4, it must not be challenged due to any failure (or alleged failure) by the Lessor to have proper regard to the Criteria or due to any other reason.

3 Essential qualifications of valuer

(a) Each Valuer must be a person who is a full member of the API at all times during his appointment under this Lease and who has (at the date of his appointment) not less than FIVE (5) years practice as a registered valuer valuing industrial premises in the Sydney metropolitan area. Any purported appointment as a Valuer of a person not so qualified is ineffective.

(b) In agreeing or determining the Current Base Rent, each Valuer must act as an expert and not as an arbitrator. Any laws relating to arbitration do not apply.

4 Dispute by Lessee of reviewed amount – lessee's notice

If, within FIFTEEN (15) Business Days after service of the Lessor's Notice, the Lessee serves on the Lessor a notice disputing that the amount notified in the Lessor's Notice is the Current Base Rent and setting out the amount which the Lessee considers to be the Current Base Rent, then the Lessor and the Lessee must try to agree the Current Base Rent within TEN (10) Business Days after service of the Lessee's Notice.

5 Lessee and lessor to endeavour to agree on valuer

If the Current Base Rent is not agreed under clause 4, the Lessor and the Lessee must try (within TWENTY (20) Business Days after service of the Lessee's Notice) to agree on the Valuer to be appointed to determine the Current Base Rent.

6 Effect of failure to agree on valuer

(a) If the Current Base Rent is not agreed under clause 4 and the Lessor and the Lessee do not agree (within TWENTY (20) Business Days after service of the Lessee's Notice) on the Valuer to be appointed to determine the Current Base Rent, either the Lessor or the Lessee may request the President of the API to promptly appoint (on behalf of the Lessor and the Lessee) a Valuer to determine the Current Base Rent within TWENTY (20) Business Days of his appointment date and to promptly notify the Lessor and the Lessee by notice of the amount determined and the reasons for the determination.

(b) The President of the API must promptly notify the Lessor and the Lessee of the Valuer's appointment and his appointment date.

(c) If a Valuer appointed under this clause does not, within TWENTY (20) Business Days of his appointment date, comply with both of the following:

(1) determine the current Base Rent; and

(2) notify the Lessor and the Lessee by notice of the amount determined and the reasons for the determination,

then either the Lessor or the Lessee may request a further appointment under this clause.

7 Adjustment of base rent once agreed or determined

(a) If the Current Base Rent agreed or determined exceeds the interim Base Rent payable under clause 2(c), the Lessee must pay to the Lessor, within TWENTY (20) Business Days of the agreement or determination:

(1) the difference between the Current Base Rent from the subject Review Date and the interim Base Rent paid since the subject Review Date; and

(2) interest on the difference, being TWO per cent (2%) more than the Westpac Indicator Lending Rate quoted on the day the Current Base Rent is agreed or determined, calculated daily on that part of the difference which would have been paid by the Lessee from time to time (if the amount agreed or determined had been the amount paid from the subject Review Date) and computed up to and including the day the Lessee pays the difference to the Lessor.

(b) If the Current Base Rent agreed or determined is less than the interim Base Rent payable under clause 2(c), the Lessor must pay to the Lessee, within TWENTY (20) Business Days of the agreement or determination:

(1) the difference between the interim Base Rent paid since the subject Review Date and the Current Base Rent from the subject Review Date; and

(2) interest on the difference, being TWO per cent (2%) more than the Westpac Indicator Lending Rate quoted on the day the Current Base Rent is agreed or determined, calculated daily on the additional amounts as they were paid to the Lessor and computed up to and including the day the Lessor pays the difference to the Lessee.

(c) Notwithstanding any other provision of this Lease, the Current Base Rent determined in accordance with this Schedule must not exceed an amount equivalent to the Base Rent payable immediately prior to the subject Review Date increased by twenty per cent (20%).

8 Costs of valuers

The costs, fees and expenses of each Valuer appointed under this Schedule must be borne by the Lessor and the Lessee in equal shares.

9 Criteria for determining the current base rent

(a) The annual market rent of the Premises at the subject Review Date must (subject to sub-clause (b)) be determined on the basis of the following Criteria:

(1) **Comparable rents**: rents as at the Review Date in respect of any comparable premises;

(2) **Condition of premises**: any adverse effect on the condition or rental value of the Premises arising out of a breach of this Lease by the Lessee (or any sub-lessee or Lessee's Predecessors) is not to have occurred;

(3) **Period between reviews**: the period which will elapse between the Review Date and the next Review Date or CPI Review Date (if any);

(4) **Length of term**: the length of the whole of the Term, to the intent that the fact that part of the Term may have elapsed as at the Review Date must not be taken into account;

(5) **Destruction or damage**: that if the Premises or any other part of the Complex has been destroyed, damaged, rendered inaccessible or are being refurbished, they are deemed to have been fully repaired and restored;

(6) **Option for further term**: that the value to a lessee of any option(s) for a further term expressed in this Lease must be taken into account;

(7) **No reduction**: that despite any other provision of this Lease, the annual market rent of the Premises must not be less than the Base Rent current immediately prior to the Review Date;

(8) **Goodwill**: that the value of any goodwill attached to the Premises due to the Lessee's occupation of or business in the Premises must not be taken into account;

(9) **Sub-lettings**: that rents in respect of any sub-letting of or concessional occupational arrangement in respect of the Premises or any comparable premises must not be taken into account;

(10) **Lessee's fixtures**: that the value of the Lessee's Equipment must not be taken into account unless it was installed pursuant to an obligation on the Lessee or any Lessee's Predecessors under this Lease;

(11) **Willing but not anxious**: that this Lease is in place and is between a willing but not anxious lessor and a willing but not anxious lessee enjoying or entitled to enjoy actual possession of the whole of the Premises as at the Review Date; and

(12) **Ready for occupation**: that the Premises are ready for immediate occupation and use.

(b) Despite any other provision of this Schedule, any person may take into account any other criteria which may, in that person's opinion, be relevant to his determination of the annual market rent of the Premises as at the subject Review Date, but must not take into account anything which is not consistent with the Criteria listed in sub-clause (a) (which are in random order and no significance or priority is to be attached to that order).

Schedule 3 – Car Parking and Use of Car Park

1 Definitions

(a) In this Schedule a reference to a clause is a reference to a clause in this Schedule.

(b) Where in this Schedule:

(1) an obligation is imposed on the Lessee, the Lessee must observe and ensure that each User observes that obligation; and

(2) the Lessee is prohibited from doing anything, the Lessee must not do that thing and must ensure that each User does not breach the prohibition.

2 Parking spaces

(a) The Lessor must notify the Lessee of the Parking Spaces allocated to it as at the date in **Item 6**. The Lessor will line mark the Parking Spaces allocated to the Lessee and will identify them as the Lessee's Parking Spaces.

(b) The Lessee must ensure that each User only parks wholly within a Parking Space allocated at the time to the Lessee.

(c) The Lessor may, on giving notice to the Lessee, change any Parking Space allocated to the Lessee.

(d) The Lessor is not liable to the Lessee for any unauthorised use of any Parking Spaces subject to the Lessor taking reasonable steps to prevent such unauthorised use of any Parking Spaces.

3 Use of car park

(a) **Notification of details**: The Lessee must promptly give to the Lessor the registration number of any car which the Lessee or any User will park in the Car Park.

(b) **Access and security**:

(1) Subject to the Lessee and each User complying with the Lessor's reasonable requirements in relation to entering and leaving the Car Park and security of the Complex, access to and egress from the Car Park shall be available TWENTY FOUR (24) hours, SEVEN (7) days a week.

(2) The Lessee must use all reasonable endeavours to maintain the Lessor's security arrangements (if any) for the Complex and must observe all reasonable directions issued by the Lessor in respect of security outside Established Complex Hours.

(3) The Lessor is under no duty to check or verify the identity, authority or good faith of any person seeking to enter or remove a car in the Car Park.

(c) **Nuisance / dangerous things:** The Lessee must not:

(1) run the engine of a car for longer than is necessary to park the car or when entering or leaving the Car Park.

(2) sound the horn of a car unnecessarily,

(3) deposit any rubbish, wrappings or garbage in the Car Park,

(4) obstruct access to the Car Park's entrances and exits, or

(5) bring into the Car Park anything which is flammable, explosive, toxic, hazardous or injurious to health, other than fuel in the storage tank of a car.

(d) **No unsound vehicles:** The Lessee must not bring into the Car Park any car unless it is in sound mechanical condition and does not drip oil or other hazardous fluids (and must promptly clean up and remove any oil or other fluid emitted from any car brought into the Car Park by it or the Users). The Lessee must not carry out repairs or maintenance to a car in the Car Park (except on a breakdown).

(e) **Traffic signs:** The Lessee must at all times strictly comply with:

(1) all traffic signs in and about the Car Park and its entrances and exits;

(2) any reasonable conditions of entry and rules applying from time to time in respect of the Car Park and of which the Lessee bas been given a copy or which are displayed in the Car Park; and

(3) the Lessor's reasonable directions from time to time in relation to the use of and access to the Car Park.

(f) **"Termination" of users:** If any User does not (in the Lessor's reasonable opinion) comply with this Schedule, the Lessee must, at the Lessor's written request, immediately terminate that person's status as a User. On service of the request on the Lessee, that person ceases to be a User and must not be reinstated as a User without the Lessor's prior approval. This sub-clause does not limit the Lessor's rights under clause 4.

4 Termination

(a) The licence granted in respect of the Parking Spaces terminates on the first to occur of the following:

(1) (at the Lessor's option) where the Lessee fails to remedy any breach of this Lease relating to the Car Park within a reasonable time after notice from the Lessor, and

(2) on the expiration or sooner determination of this Lease.

(b) On termination of the licence, the Lessee must remove from the Car Park all cars of the Lessee and each User.

(c) The Lessor may remove any car left in the Car Park in breach of sub-clause (b). Whatever the Lessor does in good faith under this sub-clause is deemed to be done with the full authority of and at the risk and cost in all rights of the Lessee.

5 No assignment by lessee

(a) This licence is not assignable by the Lessee. However, the Lessor shall (at the Lessee's request and cost) grant a substitute licence to an assignee of the whole of the Lease under an assignment made under the Lease.

(b) The substitute licence shall be consistent with the current form of car park licence then in use by the Lessor for occupiers of the Complex, but the new licence must not materially lessen the rights of the Lessee under this Schedule. The substitute licence shall be for the then unexpired portion of the Term. This clause does not prevent the Lessee from permitting the Lessee's Agents to use the Parking Spaces.

(c) The Lessee may only sub-licence this licence to a person who has been granted a sub-lease or licence in accordance with this Lease, and only for a term which does not exceed the then unexpired portion of the Term. The Lessee must ensure that any sub-licensee and any person using the Car Park with the authority of that sub-licensee complies with the provisions of this Schedule 3.

6 Effect of resumption or destruction

(a) Subject to paragraph (b), if the Lessee cannot park in any Parking Spaces due to the decision of any competent authority or any destruction or damage of the whole or any part of the Complex, the Lessee is not entitled to terminate the licence of the Parking Spaces, nor does it have any right of action or claim for any set-off, compensation or damages against the Lessor.

(b) If the Lessee cannot park for a period of 1 month in more than 50% of the Parking Spaces due to either the decision of any competent authority or any destruction or damage of the whole or any part of the Complex and the Lessor fails to provide or procure alternative car parking arrangements acceptable to the Lessee (acting reasonably) within that month, the Lessee shall be entitled to terminate this Lease by notice in writing to the Lessor.

/s/ RICHARD KALBRENER

Richard Kalbrener

/s/ LAMBERT P. ONUMA

Lambert P. Onuma

Exhibit 10.73

AIRPORT INDUSTRIAL PARK
AGREEMENT OF LEASE

THIS AGREEMENT dated the *1st* day *of November, 1999,* (hereinafter called "Lease"), is by and between AIPA PROPERTIES, L.L.C., a Hawaii Limited Liability Company (hereinafter referred to as "Owner") and Pacific Internet Exchange Corporation, a Delaware corporation (hereinafter referred to as "Tenant").

A. NON-STANDARD PROVISIONS.

1. The following constitute the non-standard provisions of this Lease and are referred to elsewhere herein and to the extent that any of the non-standard provisions conflict with or are inconsistent with the standard provisions, the non-standard provisions shall govern and control.

a. (1) Enclosed Area of the Premises ("Enclosed Area") shall be as outlined in red on Exhibit A.

(2) Open Area of the Premises ("Open Area") shall be those areas (if any) as outlined in green on Exhibit A.

b. (1) Agreed Enclosed Area: *Five Thousand Three Hundred Fifty-Seven* **(5,357) square feet of which 5,282 sq. ft. is on the ground floor, including One Hundred Fifty-Four (154) square feet as any allocation of building common areas and 75 sq. ft. is on the second floor (runby area for Tenant's elevator). In addition, Tenant's Premises includes Six Thousand Seven Hundred Two (6702) square feet of mezzanine area. This latter includes One Hundred Ninety-Five (195) square feet allocation as of building common areas.**

(2) Agreed Open Area: **Two Thousand Five Hundred Fifty Nine (2559)** square feet.

c. The term of this Lease (hereinafter "Lease Term") shall be fifteen (15) years, zero (**0**) months.

d. Scheduled Commencement Date: ***January 15, 2000***
The actual commencement date ("Commencement Date") shall be as provided in Article B.3.

e. Monthly Base Rent: ***Ten Thousand Seven Hundred Ninety Six and No/100 Dollars ($10,796 00)***

f. Tenant's monthly charge for Estimated Additional Rent during the initial calendar year or portion thereof: **One Thousand Five Hundred Six and No/100 Dollars ($1,506.00)**

g. Rent per day during any occupancy prior to commencement of the Lease Term: **None.**

h. Reimbursement to Owner for Special Improvements: ***Two Hundred Eighty-Five Thousand and No/100 Dollars ($285,000.00). Of this amount, $142,500 shall be paid to Owner on lease execution, $40,000 on completion of mezzanine column footings, and the balance when the concrete of the mezzanine slab has been poured. Tenant understands that work will be stopped if payments are not made at the specified times and Owner may, in such event, declare the Lease in default.***

Assuming that before April 30, 2000 there has been no default by Tenant nor, in the sole judgment of Owner, has there been by this date an adverse change in Tenant's financial condition as compared with that described to Owner in the meeting on August 18, 1999, Owner will, on the request of Tenant received on or before April 15, 2000, promptly refund to Tenant $142,500 and increase Monthly Base Rent for the period from May 1, 2000 through April 30, 2007 by an amount equal to $2,478.

i. Use permitted on the Premises: **Operation of internet telecommunications service, equipment and supporting offices.**

j. Tenant's address for notices if other than the Premises:

k. Tenant's billing address if other than the Premises:

l. Security Deposit: **None.**

m. Parking: **In addition to the parking that can be accommodated in Tenant's Open Area (approximately eight vehicles), Owner shall provide** Tenant with unreserved stalls for **as many as (4)** automobiles. Tenant shall pay in advance the charge established by Owner from time to time for said stalls. If Tenant fails to timely pay such charges, then Owner may, by Notice to Tenant, elect either to proceed as provided in Article 18, or to cease to provide all or any number of the foregoing parking stalls. Upon initial occupancy of the Premises, the charge for each unreserved stall shall be **$62.40** per month, both plus any tax payable by Owner due to the receipt of such rental and tax. From time to time during this Lease, the charge for such stalls shall be increased to the rates then reasonably established by Owner. The unreserved stalls shall be located **on the fifth level of Owner's Phase II structure** or elsewhere on the Property as specified from time to time by Owner. ***Tenant may at its option change the number of unreserved stalls, but not more often than quarterly.***

n. Owner's address for Notices:

3375 Koapaka Street, Suite C-300
Honolulu, Hawaii 96819

Attn: Project Manager

with copy to:

Pacific Building Corporation
2001 Sixth Avenue, Suite 3400
Seattle, WA 98121
Attn: Corporate Counsel

o. Address of Premises:
3375 Koapaka Street
Suite D198
Honolulu, HI 96819

2. The following exhibits are attached hereto and made a part hereof:

Exhibit A: Floor plan of the Enclosed Area and the Open Area.
Exhibit B: Site plan, access roads and ramps, and legal description.

3. ***Special Improvements.***

Special Improvements to be provided by Owner are as follows:

a. ***Installation of diamond pattern expanded metal sheets to a 10' height (8' above pony walls) on all party walls with an additional layer of drywall cover (all joints between sheets tack-welded); a dropped ceiling between gyp-board enclosed beams at the existing second floor framing (to prevent possible "dusting" from the existing fireproofing falling to the equipment below); concrete pony walls (24" high) at all party partitions; strengthening, insulating and finishing exterior walls (other than concrete walls) for hurricane protection and to reduce sun load; separating the mezzanine and ground floor areas to isolate Tenant's FM-200 system between levels; constructing a concrete mezzanine floor with a live load capability of 150 psf; constructing special protection for the diesel storage tank (concrete slab on grade surrounded by bollards on all sides; providing an elevated area (about 10' x 60') over the parking stalls on which Tenant can position the air-cooled condenser units for Tenant's air conditioning equipment; creating a bullpen type office (building standard finishes) of approximately 1,700 sf to accommodate 8-10 cubicles (cubicles by Tenant) as well as two unisex toilets; 500 kw of electrical power to Tenant's panel; a stairway to link the mezzanine areas to the ground floor; general lighting using industrial type fixtures in the rack space; standard demising partitions; the new entrance (double doors to create a 6' x 8' overall opening); and the pit (but not the shaft) for a future holeless hydraulic Otis elevator.***

b. ***Owner will at Owner's expense, apply for and obtain the necessary building permit.***

c. ***All other work (including but not limited to air conditioning; emergency power generation; rack power and data wiring; fire protection including pre-action system in areas protected by FM-200; furnishings; additional partitioning over that originally called for including elevator shaft extension on the second floor; floor finishes; and the additional cost of the main entry door and windows around it over that of the "plain vanilla" industrial-type entrance originally planned) will be paid for by Tenant. At Tenant's option, Owner will provide its in-house technical and construction assistance on any such additional work.***

Tenant has spoken of the foregoing work as being financed by IBM, and Owner will require such company to guarantee its lien free completion with first class workmanship. The form of the guarantee and the contracts covering the work shall be approved by Owner before such work is commenced. Any other financing and construction arrangement shall be such as to assure Owner, in Owner's reasonable judgment, of lien-free completion with the above standards of workmanship.

B. STANDARD PROVISIONS

1. PREMISES

In consideration of the obligation of Tenant to pay Rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Owner hereby leases to Tenant, and Tenant hereby leases from Owner, the Enclosed Area and the Open Area described in Article A.1.a. and A.1.b. and the parking spaces described in Article A.1.m. and shown on "Exhibit A". The areas so leased are herein called the "Premises". The Premises are a part of that certain structure constructed by Owner on the land described on "Exhibit B" ("Property") which structure is herein called the "Building". The term "Building" shall include other structures as may now exist on the Property or which may in the future be constructed thereon.

2. TERM

Tenant is to have and to hold the Premises for the Lease Term specified in Article A.1.c. The Lease Term shall commence on the "Commencement Date" as defined in Article B.3. below.

3. COMMENCEMENT DATE

The Commencement Date shall be the Scheduled Commencement Date, or the date upon which the Premises shall have been certified by Owner's Architect as being substantially completed ("Substantial Completion") in accordance with the Approved Details shown on "Exhibit C", whichever is later. If the Premises shall not have reached Substantial Completion as aforesaid by the Scheduled Commencement Date,

Tenant's obligation to pay Rent and its other obligations for payment under this Lease shall commence on the date the Premises have reached Substantial Completion, and (except as specifically provided in this Article B.3.) Owner shall not be liable to Tenant for any loss or damage resulting from such delay. Should there be any punch list items at the date of Substantial Completion, Owner shall correct the same expeditiously. In no event shall the existence of punch list items alter the date of Substantial Completion. If Tenant occupies Premises prior to Commencement Date, Tenant and Owner shall observe all the terms and conditions of this Lease except as otherwise provided therein. ***Owner expects to be able to complete Premises by January 15, 2000, assuming prompt decisions by Tenant in respect to remaining design and lease issues and no undue delay in obtaining necessary permits and deliveries. Owner shall at all times proceed with diligence and reasonable good faith efforts to meet the above date, but if so proceeding shall not be responsible for delays.***

Owner expects that this schedule can be met without overtime by the trades employed on the project, but if overtime is requested by Tenant to meet such date, such additional cost shall be at Tenant's expense.

4. RENT

Tenant covenants and agrees to pay the Monthly Base Rent, the reimbursement for Special Improvements, the monthly charge for parking, Estimated Additional Rent (or Additional Rent, as the case may be) and certain taxes, which are set forth in Articles A.1.e., A.1.l, A.1.h., A.1.m., B.5., and B.28. (all of which are collectively referred to as "Rent"), adjusted as provided elsewhere herein, in United States currency, in advance, on or before the ***fifth (5th)*** day of each calendar month during the Lease Term at Owner's office in the Building, or at such other place as Owner may from time to time designate in writing. It is agreed that since collection of any amount past due imposes an administrative cost on Owner, in addition to all other sums which may be charged by Owner hereunder, Tenant shall pay to Owner a sum equal to Five Cents ($0.05) for every dollar not paid when due. In addition, interest shall be charged to Tenant on late payments of Monthly Base Rent, Estimated Additional Rent, Additional Rent, and all other sums due under this Lease from the date such payments are due until received by Owner, at the lower of (i) the specified maximum rate, if any, then allowed by applicable law, or (ii) a floating rate equal to three (3) percentage points over the posted prime rate of First Hawaiian Bank, Honolulu, Hawaii. Payment of Rent shall be applied by Owner first to unpaid late charges, then to accrued and unpaid interest, and then to Rent obligations.

5. ADDITIONAL RENT

a. It is the express intention of Owner and Tenant that the Monthly Base Rent herein specified shall be net to the owner, except for Owner's Repairs as provided in Article B.10. All Operating Expenses (set forth in Article B.5.b.), Taxes and Assessments (set forth in Article B.5.c.), and Excess Ground Rent Payments (set forth in Article B.5.e.) which Tenant is required

to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, and all damages, costs, and expenses which Owner may incur by reason of any default of Tenant, or failure on Tenant's part to comply with the terms of this Lease, shall be deemed to be and shall from time to time be referred to as "Additional Rent."

b. (i) "Operating Expenses" shall mean the aggregate of all costs (including Hawaii General Excise Tax) actually paid or incurred by Owner in the operation, maintenance and repair of the Building, the surrounding garden areas, and the necessary access roads, specifically excluding, however, those costs to be paid by Tenant at Tenant's sole cost and expense as provided in Articles B.8. and B.9. and those to be paid by Owner at Owner's sole cost and expense as provided in Article B.10. Operating Expenses include Taxes and Assessments (defined in Article B.5.c.). Operating Expenses include, but are not limited to: (i) exterior painting and weatherproofing; (ii) exterior window washing and cleaning; (iii) operation, maintenance, repair and replacement of: the central cooling towers; the pumps, piping and related equipment; the sewer, plumbing, and electrical systems, including all costs, charges, and expenses incurred by Owner arising from the change of any company providing electricity service, if Owner has reasonably determined such change to be justified by future savings in power costs, and similarly in respect to telecommunications service (other than air conditioning, plumbing and electrical systems and equipment installed within the premises of various tenants to meet their specific needs); the elevators serving the main building lobby, Phase II; and the fire and other emergency systems and equipment; (iv) water and sewer charges; (v) parking and traffic control; (vi) fire and other casualty and "all risk" insurance (including such endorsements as Owner deems advisable); (vii) public liability and property damage insurance; (viii) management, accounting and office expense equal to four and three-quarters percent (4-3/4%) of the total Rents and parking income received from the Building and Property; (ix) legal fees incurred in the interest of the overall project, excluding legal fees incurred in actions against specific tenants; and (x) engineering fees. Operating Expenses shall also include, without limitation, for common areas: janitorial services (including rubbish removal); window and other cleaning costs; pest control; supplies; security services; repainting and redecoration; replacement of wall and floor coverings; maintenance and repair of window coverings; charges for water, sewer and electricity; and costs of planting and maintaining the garden areas. Operating Expenses shall include both costs directly incurred and costs incurred under outside contracts. Operating Expenses shall include the amortized costs (over ten (10) years) of capital improvements or equipment which are reasonably calculated to increase the efficiency of the Property and its improvements or reduce other Operating Expenses, or which are required under any governmental laws, rules or regulations applicable to the Property (without limitation including the requirements of the Americans with

Disabilities Act), with interest on unamortized amounts figured at eleven percent (11%) per annum.

"Operating Expenses" shall specifically exclude: (i) all financing costs, including interest and principal payments on any debt except as provided above; (ii) any income tax of a general nature applicable to Owner's various interests, inheritance tax, gift tax, corporate licensing fees and expenses, and estate, succession or other similar tax; (iii) any voluntary assessments unless of substantial benefit to the overall project; (iv) costs of any repairs made in accordance with Article B.14. and B.20.; (v) payments to Owner or its affiliates in excess of market rates for services other than for management, accounting and office expenses (see item viii in the subparagraph next above); (vi) costs of special services as may be rendered to individual tenants or others; (vii) costs of preparing space for lease; (viii) marketing expenses; (ix) investigation, reporting, disposal, treatment, removal or remediation of Hazardous Substances, and (x) costs resulting from Owner's gross negligence; ***(xi) leasing commissions, attorney's fees, costs, disbursements, and other expenses incurred in connection with negotiations or disputes with tenants, or in connection with leasing, renovating, or improving space for tenants or other occupants or prospective tenants or other occupants of the Building; (xii) the cost of any service sold to any tenant (including Tenant) or other occupant for which Owner is entitled to be reimbursed as an additional charge or rental over and above the basic rent and escalations payable under the lease with that tenant; (xiii) any depreciation on the Building or Property; (xiv) expenses in connection with services or other benefits of a type that are not provided to Tenant but which are provided another tenant or occupant of the Building or Property, ADA costs excepted; (xv) costs incurred due to Owner's willful violation of any terms or conditions of this Lease or any other lease relating to the Building or Property; (xvi) any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Owner; (xvii) costs of repairs and other work occasioned by fire, windstorm, or other casualty which are reimbursed to Owner by insurance; (xviii) any costs, fines, or penalties incurred due to willful violations by Owner of any governmental rule or authority, this Lease or any other lease in the Property, or due to Owner's gross negligence or willful misconduct; (xix) management costs to the extent they exceed the level defined in this Lease; (xx) costs for sculpture, paintings, or other objects of art (nor insurance thereon or extraordinary security in connection therewith); (xxi)wages, salaries, or other compensation paid to any executive employees above the grade of building manager except as included in management fees set forth in the subparagraph next above; (xxii) any other expense that under generally accepted accounting principles and practice consistently applied would not be considered a normal maintenance or operating expense, except as otherwise provided in this Lease.***

(ii) Owner expects that certain Operating Expenses may be paid directly, in whole or in part, by one or more major tenants ("Major Tenants") occupying a large portion (perhaps all) of a particular floor. Such amounts shall be deducted from aggregate Operating Expenses and the remainder allocated among other tenants in the Building. Each such tenant shall pay, as its proportionate share, an amount equal to such remaining Operating Expenses times a fraction, the numerator of which shall be the sum of the Enclosed Area plus twenty percent (20%) of the Open Area and the denominator of which shall be the sum of the total enclosed area in the Building as is defined in the various tenant leases which is not taken by Major Tenants and which is under lease at year's end plus twenty percent (20%) of the total open area of the Building as defined in the various tenant leases which is not taken by Major Tenants and which is under lease at year's end.

c. "Taxes and Assessments" shall mean any and all taxes, assessments, license fees and governmental charges of any kind or nature whatsoever, levied, assessed or imposed against the Property, including any Hawaii General Excise Tax paid by Owner on account thereof. Taxes and Assessments shall also include, but shall not be limited to, environmental levies affecting the Property or any portion thereof, or which may hereafter become effective, including, but not limited to, parking taxes, levies, or charges, employer parking regulations, and any other parking or vehicular regulations, levies, or charges imposed by any municipal, state or federal agency or authority relating to the Property in any manner. Tenant's share of such Taxes and Assessments shall be computed the same as provided above for Operating Expenses (see Article B.5.b.(ii)).

d. Additional Rent shall be that amount set forth in Article A.1.f. during the initial calendar year (or portion thereof) of the Lease Term. For each calendar year thereafter, Tenant's Estimated Additional Rent shall be estimated by Owner each December of the prior calendar year, allocated as provided herein, and paid by Tenant monthly for the succeeding calendar year. During such later calendar years, Estimated Additional Rent may be adjusted by Owner from time to time as ***reasonably*** necessary to reflect changes in the elements of Additional Rent. Costs for partial years shall be equitably prorated. Following each December 31st of the Lease Term, the actual charges constituting Additional Rent shall be determined by Owner according to generally accepted accounting principles, and differences credited or charged accordingly. Tenant shall upon invoice pay to Owner the difference, if any, between Tenant's share of all Additional Rent expenses and the sum of Tenant's Estimated Additional Rent payments. Credits, if any, shall be applied to reduce the Monthly Base Rent for the succeeding calendar year or, in the case of the final calendar year, or portion thereof, refunded at the expiration of the Lease Term. ***Within 90 days after receipt of Owner's statement setting forth the actual Additional Rent (the "Statement") Tenant shall have the right to audit at Owner's local offices, at Tenant's expense, Owner's accounts and records relating to the***

Additional Rent. Such audit shall be conducted by a certified public accountant approved by Owner. If such audit reveals that Owner has overcharged Tenant, the amount overcharged shall be paid to Tenant within 30 days after the audit is concluded, together with interest thereon at the rate of 10% per annum, from the date the Statement was delivered to Tenant until payment of the overcharge is made to Tenant. In addition, if the Statement exceeds the actual Additional Rent which should have been charged to Tenant by more than 5%, the cost of the audit shall be paid by Owner. If no such overcharge is found, Tenant shall reimburse Owner 50% of Tenant's audit cost to cover the cost to Owner of the disruption caused by such audit. Tenant understands that such charge is currently the amount stated in Article A.1.f. and approves such amount.

e. Tenant shall pay its proportionate share of ground rent payments, including Hawaii General Excise Tax, allocable to the Property and payable by Owner under the terms of the Ground Lease (referenced in Article B.19.) to the extent that such payments exceed the amount of ground rent payments payable by Owner during calendar year 1995 ("Excess Ground Rent Payments" or "EGRP"). Tenant's proportionate share of EGRP shall be determined by multiplying EGRP by a fraction, the numerator of which is the number of square feet of Enclosed Area in the Premises, and the denominator of which is the total number of square feet of Enclosed Area in the Building. For the period from January 1, 1996, to December 31, 2005, EGRP is $19,430 per month, plus Hawaii General Excise Tax; for the ensuing ten (10) year period EGRP is $50,518 per month, plus Hawaii General Excise Tax.

6. USE

The Premises shall be used only for the purpose stated in Article A.1.i. Retail sales of any kind on the Premises, outside storage (as contrasted with temporary parking), including, without limitation, storage of trucks and other vehicles not frequently used in Tenant's business) is prohibited without Owner's prior written consent. Tenant shall have access to Premises twenty-four (24) hours per day, seven days a week. Tenant shall at its own cost and expense obtain any and all licenses and permits necessary for its use of the Premises. Tenant shall comply with all governmental laws, ordinances and regulations ***specifically*** applicable to Tenant's ***specific*** use of the Premises, and shall promptly comply with all governmental orders and directives, including, but not limited to, those regarding the correction, prevention and abatement of nuisances in or upon, or connected with Tenant's use of, the Premises, all at Tenant's sole expense. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or would disturb or endanger any other tenants of the Building. Except as provided in Article B.32., Tenant shall not receive, store, dispose of, or otherwise handle any product, material or merchandise which is toxic, explosive or highly flammable. Tenant shall not permit the Premises to be used for any purpose or in any manner (including, without limitation, any method of storage) which would render any insurance carried under the terms of this Lease

(including, but not limited to, insurance carried by Owner) void or the insurance risk more hazardous. In the event Tenant's use of the Premises shall result in an increase ***of more than 1%*** in insurance premiums, Tenant shall be solely responsible for said increase. In the event Tenant's use of the Premises shall result in cancellation or non-renewal of any insurance carried under the terms of this Lease, Tenant shall immediately cease such use.

7. LAWS, RULES AND REGULATIONS

Tenant shall, at Tenant's sole cost and expense, promptly comply with and shall faithfully observe in its use of the Premises all laws, ordinances, orders, rules, regulations or requirements of all county, municipal, state, federal and other applicable governmental authorities now in force, or which may hereafter be in force (including, without limitation, the Americans with Disabilities Act and any amendments thereto). Tenant shall further observe such reasonable rules and regulations as may be adopted by Owner from time to time for the safety, care and cleanliness of the Premises and the preservation of good order therein. A violation of any of the laws, ordinances, orders, rules or regulations referred above shall constitute a default under this Lease. ***Notwithstanding the foregoing or anything to the contrary contained in this Lease, Tenant shall not be responsible for compliance with any laws, codes, ordinances or other governmental directives where such compliance is not related specifically to Tenant's use and occupancy of the Premises.***

Owner warrants that on the commencement of the term hereof all work by Owner within the Premises shall comply with all laws, codes, ordinances and other government requirements then applicable and that such work by Owner shall be in good working order, condition, and repair.

8. UTILITIES

Owner agrees to provide at its cost connections for water ***and*** sewer, but Tenant shall pay for all water, sewer, electricity, telephone, and other utilities and services used on, in or from the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto and any maintenance charges for utilities and shall furnish all electric light bulbs and tubes. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion as determined by Owner of all charges jointly metered with other premises. ***The cost of Tenant's 500 kw electrical connection shall be paid by Tenant and is included in the amount referred to in Article A.1.h. Notwithstanding the foregoing and to the extent Owner is obligated under the Lease to provide essential services as herein set forth; (i) in the event that Owner is unable to supply any of the Premises' sanitary, electrical, water, or life safety systems (collectively, the "Essential Services"), and despite Tenant's own emergency equipment such inability of Owner materially impairs Tenant's ability to carry on its business in the Premises for a period of two (2) consecutive business days, the Base Rent and all Additional Rent shall be abated commencing with the third (3rd) business*** **day** ***of such material interference with Tenant's business, based upon the extent to which such inability to supply Essential Services***

materially impairs Tenant's ability to carry on its business in the Premises. Such abatement shall continue until the Essential Services have been restored to such extent that the lack of any remaining services no longer materially impairs Tenant's ability to carry on its business in the Premises. Tenant shall not be entitled to such an abatement to the extent that Owner's inability to supply Essential Services to Tenant is caused by Tenant, its employees, contractors, agents, licensees or invitees; and

(ii) notwithstanding the foregoing, in the event that Owner is unable to supply any Essential Services by reason of acts of Gods, accidents, breakage, repairs, strikes, lockouts, labor disputes, inability to obtain utilities or materials or by any other reason beyond Owner's reasonable control, and despite Tenant's own emergency equipment such inability of Owner materially impairs Tenant's ability to carry on its business in the Premises for a period of forty-five (45) consecutive calendar days, the Base Monthly Rent and Additional Rent shall be abated commencing with the forty-sixth (46) day of such material interference with Tenant's business based upon the extent to which such inability to supply Essential Services materially impairs Tenant's ability to carry on its business in the Premises. Such abatement shall continue until the Essential Services have been restored to the extent that the lack of any remaining services no longer materially impairs Tenant's ability to carry on its business in the Premises. Tenant shall not be entitled to such an abatement to the extent that Owner's inability to supply Essential Services to Tenant is caused by Tenant, its employees, contractors, agents, licensees, or invitees; and

(iii) in the event of any stoppage or interruption of Essential Services to the Premises, Owner shall use its best efforts to restore Essential Services to the Premises as soon as possible; provided, that Tenant shall have the right, at its option, to terminate this Lease by written Notice to Owner if such failure to provide Essential Services by Owner continues for any reason (other than the actions of Tenant, its employees, contractors, agents, licensees or invitees) for more than one hundred twenty (120) consecutive calendar days and such failure materially impairs Tenant's ability to carry on its business in the Premises.

9. TENANTS MAINTENANCE

a. Tenant shall at its own cost and expense keep and maintain the Premises, Special Improvements, Tenant's parking area and/or Open Area in good condition, promptly making all necessary repairs and replacements (except those for which Owner is expressly responsible under the terms of this Lease). Tenant shall keep the whole of the Premises, Special Improvements and Tenant's parking area and/or Open Area in a clean and sanitary condition, with daily trash removal and pest extermination as required. Tenant shall not be obligated to repair any damage caused by fire, windstorms, or other casualty covered by insurance maintained by Owner ("Insured Casualty").

b. Tenant, its officers, agents, employees and visitors, shall not damage the Premises or the Building, and Tenant shall, at its sole cost and expense, promptly repair any damage thereto except as may be caused by an Insured Casualty or by Owner or its officers, agents, employees and visitors. If Tenant can be identified as being responsible for the obstruction or stoppage of a sanitary sewage line, then Tenant shall pay, upon demand, as Additional Rent, the entire ***reasonable*** cost of clearing the same.

c. Tenant and its officers, agents, employees and visitors, shall have the right to use the access roads and ramps as shown on Exhibit B, subject to such reasonable rules and regulations as Owner may from time to time prescribe, and subject to rights of ingress and egress of other tenants.

d. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor for servicing all air conditioning systems (if any) and other equipment within the Premises.

e. Tenant shall, at the termination of this Lease by the expiration of time or otherwise, surrender and deliver up the Premises to Owner in as good condition as when received by Tenant from Owner, reasonable use and wear and damage by insured Casualty excepted.

10. OWNER'S REPAIRS

Owner shall promptly maintain and repair, at its expense, all structural elements of the Building ("Owner's Repairs"). Tenant shall repair and pay for any damage to such items to be maintained by Owner caused by any act, omission or negligence of Tenant, or its officers, agents, employees and visitors. Maintenance of windows, doors, siding, and special store fronts or office entries shall be Tenant's responsibility. Tenant shall immediately give Owner Notice of need for Owner's Repairs, after which Owner shall have a reasonable opportunity and time to repair same. Owner's liability with respect to any repairs or maintenance for which Owner is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance.

11. SUBSTITUTION OF PREMISES [omitted in original]

12. ALTERATIONS

Tenant agrees by taking possession of the Premises that ***Owner's work therein is*** in a tenantable and good condition, that Tenant will take good care of the Premises, and the same will not be altered or in any way changed without the written consent of Owner. The design and installation by Tenant of ***those items set forth in Article A.3.c.*** is a condition of Tenant's obligations ***under*** this Lease, and Owner has required Tenant to make ***such*** Special Improvements to the Premises ***as a condition thereof.*** No such work shall be undertaken by Tenant without Owner's written permission being first obtained. Notwithstanding consent by Owner, all such alterations shall be at Tenant's sole cost and shall comply with all applicable codes, rules, and regulations, including

requirements of the Americans with Disabilities Act, and upon their completion, Tenant shall promptly furnish Owner with detailed drawings of such alterations. Tenant hereby waives any right to make repairs at Owner's expense unless repairs which are required of Owner and which materially and adversely affect Tenant's business operations are not made by Owner within a reasonable time after Notice. Tenant shall not put any curtains, draperies or other hangings on or beside the windows in the Premises without first obtaining Owner's written consent. Owner may make any alterations or improvements which Owner may deem necessary for the preservation, safety or improvement of the Premises, the Building, or the Property ***provided that such alternations do not unreasonably interfere with Tenant's business or materially reduce its Enclosed Area.*** All alterations, additions and improvements, irrespective of when and by whom they are made, except trade fixtures physically installed by Tenant and which are removed without damage to the Premises prior to the termination of this Lease, shall become the property of Owner at the termination of this Lease.

13. ENTRY AND INSPECTION

Tenant will permit Owner and its agents to enter into and upon the Premises at all reasonable times ***with 24-hours prior notice except in case of emergency*** for the purpose of inspecting the same or for the purpose of altering or improving the Premises, the Building, or the Property and when reasonably necessary Owner may close entrances, doors, corridors, or other facilities without liability to Tenant by reason of such closure and without such action by Owner being construed as an eviction of Tenant or relieving the Tenant from the duty of observing and performing any of the provisions of this Lease. Following reasonable notice to Tenant ***and only during the final year of the Lease Term***, Owner shall have the right to enter the Premises from time to time during normal business hours for the purpose of showing the Premises to prospective tenants of the Building.

14. DAMAGE OR DESTRUCTION

If the Premises are damaged or destroyed by a casualty:

a. ***Owner shall give Notice to Tenant of its election to rebuild or not to rebuild the Premises within thirty (30) days of casualty to the Premises and such Notice shall specify Landlord's architect's or engineer's reasonable estimate as to the time required to rebuild or restore the Premises;***

b. ***If, in the reasonable opinion of Owner's architect or engineer, the Premises will take longer than ninety (90) days to rebuild or restore and Owner has elected to perform such rebuilding or restoration, Tenant may, notwithstanding Owner's election, terminate this Lease by Notice to Owner of such termination within five (5) days after its receipt of Owner's Notice. Such termination shall be effective thirty (30) days after the giving of Tenant's Notice.***

c. ***If Owner fails to restore the Premises (including reasonable means of access thereto) within a period which is sixty (60) days longer than the period stated in Owner's Notice to Tenant as the estimated rebuilding period, Tenant, at any time thereafter until such rebuilding is completed, may terminate this Lease by delivering Notice to Owner of such termination, in which event this Lease shall terminate as of the date of the giving of such Notice.***

15. ADVERTISING

Tenant shall not inscribe any inscription, post, place, or in any manner display any sign, notice, picture, placard or poster, or any advertising matter whatsoever, anywhere in or about the Premises or the Property at places visible (either directly or indirectly as an outline or shadow on a glass pane) from anywhere outside the Premises without first obtaining Owner's written consent thereto.

16. INDEMNITY, LOSS AND WAIVER OF SUBROGATION

Tenant shall defend and indemnify Owner and its agents and save them harmless from and against any and all liability, damages, costs, or expenses, including attorneys' fees, arising from any act, omission or negligence of Tenant or the officers, agents, employees, or visitors of Tenant in or about the Property, or arising from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in or about the Premises, provided the foregoing provision shall not be construed to make Tenant responsible for loss, damage, liability, or expense resulting from injuries to third parties caused by the gross negligence of Owner or any officer, agent, or employee of Owner. Owner and Tenant each release the other from responsibility for, and waive their entire claim of recovery for (i) any loss or damage to the real or personal property of either located anywhere in or about the Property, arising out of or incident to the occurrence of any of the perils which may be covered by an "all-risk" type insurance policy, with extended coverage endorsement in common use in the Honolulu locality, or (ii) loss resulting from business interruption at the Premises or loss of rental income therefrom, arising out of or incident to the occurrence of any of the perils which may be covered by a business interruption insurance policy and by a loss of rental income insurance policy in common use in the Honolulu locality. To the extent that such risks under (i) and (ii) are in fact covered by insurance, each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party. Owner agrees that it will carry fire and extended insurance on the Building in an amount not less than eighty percent (80%) of replacement cost, excluding foundations. Tenant and Owner each agree to carry commercial liability insurance coverage for injury to person or property in an amount not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) general aggregate, and Tenant shall cause Owner to be named as an additional insured on Tenant's policy. Tenant shall provide Owner with a certificate evidencing such insurance which provides Owner with thirty (30) days' written notice prior to cancellation.

17. LIENS AND INSOLVENCY

a. Tenant shall pay, when due, all sums of money that may become due for, or are purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished or to be furnished to or for Tenant (collectively the "Work") in, upon or about the Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises and/or Owner's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures and/or becomes due. However, Tenant may contest any such lien provided that Tenant provides such security for payment of the lien or liens as Owner reasonably requires. Notwithstanding any such contest, if any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed or if so stayed and said stay thereafter expires, then and in any such event Tenant shall immediately pay and discharge said judgment.

b. Owner may terminate this Lease by giving Tenant notice of its election to do so, if: (i) Tenant files a voluntary petition in bankruptcy, or for reorganization under the bankruptcy laws, or is adjudged a bankrupt by a court of competent jurisdiction, (ii) if Tenant makes an assignment for the benefit of creditors, or if a receiver is appointed for Tenant's business, or (iii) any other action is taken by or against Tenant under any state or federal insolvency or bankruptcy act which is not discharged within sixty (60) calendar days. No interest in this Lease or estate hereby created in favor of Tenant shall pass by operation of law under any such bankruptcy or insolvency act to any person whomsoever without the prior express written consent of Owner. Any purported transfer in violation of this Article shall constitute a default by Tenant.

c. For purposes of this Lease, the following shall be deemed "Events of Bankruptcy" of Tenant: (i) if Tenant becomes "insolvent," as defined in Title 11 of the United States Code, entitled "Bankruptcy," 11 U.S.C. Section 101 et seq., as amended, or any successor statute (hereinafter call the "Bankruptcy Code"), or under the insolvency laws of any state, district, commonwealth or territory of the United States of America ("Insolvency Laws"); or (ii) if Tenant files a voluntary petition under the Bankruptcy Code or Insolvency Laws; or (iii) if a receiver of custodian is appointed for any or all of Tenant's property or assets, or if there is instituted a foreclosure action on any of Tenant's property; or (iv) if there is filed an involuntary petition against Tenant as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is not dismissed within thirty (30) days of filing, or results in issuance of an order for relief against the debtor; or (v) if Tenant makes or consents to an assignment of its assets, in whole or in part, for the benefit of creditors, or a common law composition of creditors.

d. If Tenant becomes the subject debtor in a case pending under the Bankruptcy Code, Owner's right to terminate this Lease under this section shall be subject to the applicable rights (if any) of the Trustee in Bankruptcy to assume or assign this Lease as then provided for in the Bankruptcy Code. However, the Trustee in Bankruptcy must give to Owner and Owner must receive proper written notice of the Trustee's assumption or rejection of this Lease within sixty (60) days (or such other applicable period as is provided for in the Bankruptcy Code) after the entry of the Order for Relief; it being agreed that failure of the Trustee to give notice of such assumption hereof within said period shall conclusively and irrevocably constitute the Trustee's rejection of this Lease and waiver of any rights of the Trustee to assume or assign this Lease. The Trustee shall not have the right to assume or assign this Lease, unless the Trustee (A) promptly and fully cures all defaults under this Lease, (B) promptly and fully compensates Owner and any other party other than Tenant to the Lease for all monetary damages and any actual pecuniary loss to such party incurred as a result of such default, (C) the Bankruptcy Court (or other court of competent jurisdiction) enters an order authorizing the assumption or assignment, (D) the assumption or assignment is not prohibited under the applicable law, including, but not limited to, Section 365 of the Bankruptcy Code, and (E) provides to Owner "adequate assurance of future performance."

18. DEFAULT OF TENANT

a. Events of Default. The occurrence of any of the following shall constitute an Event of Default:

(i) Tenant's failure to pay Rent when due, if the failure continues for ***ten (10)*** days after Notice has been given to Tenant. If Tenant shall fail to pay Rent when due four (4) times in any twelve (12) month period, such occurrence shall be deemed an Event of Default on the part of Tenant and no Notice need be given to Tenant nor shall Tenant have any right to cure such default;

(ii) Tenant's failure to move into and occupy the Premises within thirty (30) days after the Commencement Date;

(iii) Tenant's abandonment and vacation of the Premises (without limiting other acts which may constitute an abandonment and vacation, failure to staff with personnel and utilize the Premises for thirty (30) consecutive days shall be deemed an abandonment and vacation); or

(iv) Tenant's failure to perform or comply with any provisions of this Lease (other than those Events of Default set forth in (i), (ii) or (iii) immediately above) if the failure to perform or comply is not cured within thirty (30) days after Notice has been given to Tenant, unless such cure reasonably requires

more than thirty (30) days, provided cure has been commenced within thirty (30) days and is diligently pursued to completion.

b. Notices given under this Article shall specify the default and the applicable Lease provisions. No such Notice shall be deemed a forfeiture or a termination of this Lease unless Owner so elects in the notice.

c. Remedies. If there is an Event of Default, Owner shall have the following remedies:

(i) Owner may continue this Lease in full force and effect, and it will continue in full force and effect as long as Owner does not expressly terminate, in writing, Tenant's right to possession, and Owner shall have the right to collect Rent, Estimated Additional Rent and Additional Rent when due. During the period Tenant is in default, Owner may re-enter the Premises, remove all of Tenant's property therefrom and store the same in a public warehouse or elsewhere at the expense and for the account of Tenant, and sublet the Premises, or any part of them, to third parties for Tenant's account. Tenant shall be immediately liable to Owner for all costs Owner incurred by reason of its re-entry, protecting or caring for the Premises, or subletting or endeavoring to sublet the Premises, including, without limitation, attorneys' fees, brokers' commissions, reasonable expenses of remodelling which are necessary or desirable for the reletting, and like costs. Subletting may be for a period shorter than the remaining term of this Lease. Tenant shall pay to Owner the Rent, Estimated Additional Rent and Additional Rent due under this Lease on the dates such are due, less the rent Owner receives from any subletting. No act by Owner allowed by this Article shall terminate this Lease unless Owner gives Notice to Tenant that Owner elects to terminate Tenant's right to possession.

(ii) Owner can terminate Tenant's right to possession of the Premises at any time. No act by Owner other than giving Notice to Tenant that its right to possession has been terminated shall terminate this Lease. Acts of maintenance, repair or remodelling efforts to sublet the Premises shall not constitute a termination of Tenant's right to possession. On termination of Tenant's right to possession of the Premises, Owner has the right to recover from Tenant:

(a) The worth, at the time of the award, of the unpaid Monthly Base Rent and Additional Rent (less any rent received pursuant to Article B.18.c.(i) that had been earned at the time of termination of this Lease;

(b) The worth, at the time of the award, of the amount by which the unpaid Monthly Base Rent and Additional Rent that would have been earned after the date of termination of this Lease to the time of the award exceeds the fair and reasonable rental value of the Premises for the same period;

(c) The worth, at the time of the award, of the amount by which the unpaid Monthly Base Rent and Additional Rent that would have been earned for the balance of the Lease Term after the time of the award exceeds the fair and reasonable rental value of the Premises for the same period;

(d) Any other amount, including, without limitation, court costs, including depositions and all other expenses incurred in connection with discovery, costs of experts, reasonable attorneys' fees, brokers' commissions reasonably expended or to be expended, reasonable expenses of remodelling expended or to be expended, and like costs, necessary to compensate Owner for all detriment reasonably caused by Tenant's default.

If the Premises or any part thereof shall be relet by Owner for all or any part of the unexpired term of this Lease before a presentation of proof of damages in a proceeding brought by Owner to recover from Tenant hereunder, the amount of rent received upon such reletting shall be prima facie evidence of the fair and reasonable rental value of the Premises, or of that part relet, from the date of termination of this Lease through the balance of its term. If Owner, using commercially reasonable efforts, is unable to relet the Premises, or any part thereof, for all or any part of the unexpired term of this Lease before a presentation of proof of damages in a proceeding brought by Owner to recover from Tenant hereunder, the failure to rent shall be prima facie evidence that the fair and reasonable rental value of the Premises, or of that part not relet, through the balance of the Lease Term is zero. As used in subparagraphs (a) and (b) of this Article B.18.c.(ii), "the worth, at the time of the award," shall be computed by allowing interest at the lower of (i) the specified maximum rate, if any, then allowed by applicable law, or (ii) a floating rate equal to three (3) percentage points over the prime rate then being charged its best corporate customers by First Hawaiian Bank, Honolulu, Hawaii. As used in subparagraph (c) of this Article B.18.c.(ii), "the worth, at the time of the award," shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank serving Honolulu, Hawaii, at the time of the award.

(iii) Owner shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Owner to terminate this Lease.

d. Owner's Right to Cure. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or in connection with this Lease, and shall not have cured such default within the respective periods specified above, Owner may, but

without obligation so to do, immediately or at any time thereafter, perform the same for the account of Tenant, and if Owner makes expenditures or incurs any obligation for the payment of money in connection therewith, including, but not limited to, attorneys' fees, costs and expenses in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred shall be paid by Tenant to Owner within thirty (30) days after written submission of a bill to Tenant therefor, in accordance with Article B.23., and if paid at a later date shall bear interest at the lower of (i) the specified maximum rate, if any, then allowed by applicable law, or (ii) a floating rate equal to three (3) percentage points over the prime rate then being charged its best corporate customers by First Hawaiian Bank, Honolulu, Hawaii, from the date the sum is due hereunder to the date Owner is reimbursed by Tenant. Such sum, together with interest thereon, shall be deemed Additional Rent.

19. PRIORITY; ESTOPPEL CERTIFICATES

a. Priority. This Lease is technically a sublease in that the Property is subject to a ground lease ("Ground Lease") between Owner, as Ground Lessee, and Loyalty Investments, as Ground Lessor. This Lease shall automatically be subordinate to the Ground Lease or to any mortgage or deed of trust heretofore or hereafter placed upon the Property by Ground Lessor or upon Ground Lease and Building by Owner, to any and all advances made or to be made thereunder, to the interest on the obligations secured thereby, and to all renewals, replacements and extensions thereof provided, however, that any mortgagees or beneficiaries of deeds of trust ("Mortgagees") shall be bound by the terms of this Lease as long as Tenant is not in ***material*** default ***beyond any applicable cure and notice periods*** thereunder. Furthermore, in the event of foreclosure of any such mortgage or deed of trust or exercise of the power of sale thereunder, Tenant shall attorn to the purchaser of the Property at such foreclosure or sale and recognize such purchaser as Owner under this Lease if so requested by such purchaser ***provided that Tenant first obtains from the holder of the mortgage, deed of trust, or other instrument of security to which this Lease is to become subordinated a written agreement that provides substantially the following: "As long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights hereunder."*** If, pursuant to the foregoing, Tenant attorns to a purchaser or lender, the latter shall not be: (i) liable for any act or omission of any prior lessor; (ii) subject to any offsets or defenses which Tenant may have against any prior lessor; (iii) bound by any lease rental (except security deposits) paid more than thirty (30) days in advance of due date; or (iv) bound by any amendment or modification of this Lease made without mortgagee's prior written consent, but nothing herein shall be construed as a waiver of any rights which Tenant may have against any prior lessor (including Lessor). If any mortgagee or deed of trust beneficiary elects to have this Lease superior to its mortgage or

deed of trust and gives notice of its election to Tenant, then this Lease shall thereupon become superior to the lien of such mortgage or deed of trust. Within fourteen (14) days of presentation, Tenant shall execute, acknowledge, and deliver to Owner any subordination agreement or other instrument that Owner may require to carry out the provisions of this article ***provided such instrument does not materially increase Tenant's obligation or decrease its rights under this Lease***. Failure to execute said subordination agreement, or other instrument the subject of this subprovision shall constitute a default by Tenant of its obligations under this Lease and shall entitle Owner to exercise its rights established in Paragraph 18 of this Lease. Additionally, Tenant shall be liable to Owner for any damages suffered by Owner as a result of Tenant's delay or failure to execute said subordination agreement, but, in any event, said damages shall be not less than One Hundred and No/100 Dollars ($100.00) for each calendar day of delay beyond the specified fourteen (14) days until said subordination agreement or other instrument has been delivered by Tenant to Owner.

b. Estoppel Certificates. Tenant shall, from time to time, within fourteen (14) days following written request of Owner, execute, acknowledge and return to Owner or its designee a written statement prepared by Owner certifying if true, ***only that:*** the Commencement Date and Termination Date; the amount of Monthly Rent and the date to which Rent has been paid; and that (if true), (i) this Lease (including specified modifications) is in full force and effect; (ii) this Lease represents the entire agreement between the parties; (iii) all conditions under this Lease to be performed by the Owner have been satisfied and that there are no ***known*** existing claims, defenses or offsets which Tenant has against the enforcement of this Lease by the Owner; and (iv) no Rent has been paid more than one month in advance; and the amount of the security deposit. It is intended that any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of Owner's interest, any mortgagee, deed of trust beneficiary, or assignee of any mortgage or deed of trust upon Owner's interest in the Building and Property. Failure to execute said Estoppel Certificate, or other instrument the subject of this subprovision, shall constitute a default by Tenant of its obligations under this Lease and shall entitle Owner to exercise its rights established in Paragraph 18 of this Lease. Additionally, Tenant shall be liable to Owner for any damages suffered by Owner as a result of Tenant's delay or failure to execute said Estoppel Certificate, but, in any event, said damages shall be not less than One Hundred and No/100 Dollars ($100.00) for each calendar day of delay beyond the specified fourteen (14) days until said documents have been delivered by Tenant to Owner.

20. CONDEMNATION

If the whole of the Premises, or if such portion of either the Premises or the Building as may be required for the reasonable use of the Premises, shall be taken by virtue of any condemnation or eminent domain proceeding, or by purchase in lieu thereof for

public or quasi-public use, this Lease shall automatically terminate as of the date possession is taken by the condemning authority. Current Rent shall be apportioned as of the date of such termination. In case of a taking of a part of the Premises or the Building not required for the reasonable use of the Premises, then this Lease shall continue in full force and effect and the rental shall be equitably reduced, such rent reduction to be effective on the date of such partial taking. No award of any partial or entire taking shall be apportioned, and Tenant hereby assigns to Owner any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof, provided, however, that nothing herein shall be deemed to give Owner any interest in, or to require Tenant to assign to Owner, any award made to Tenant for the taking of personal property or fixtures belonging to Tenant, for the interruption of or damages to Tenant's business or for Tenant's moving expenses.

21. SPECIAL IMPROVEMENTS

The term "Special Improvements" as used in this Lease refers to all improvements to the Premises whether provided at the expense of Owner or Tenant, except those elements to be maintained and repaired by Owner as provided in Article 10. Before occupancy of the Premises, Tenant shall pay Owner as Additional Rent that certain sum set forth in Article A.1.h. in payment for certain Special Improvements made to the Premises. Where Special Improvements are to be installed by Owner, Tenant shall give Owner a Notice of its final color selections and all other details of its layout in sufficient time to permit Owner's completion of all such work by the Scheduled Commencement Date, using its normal crews on a regular time basis, and such notice shall in any event be given not later than sixty (60) working days before such scheduled Commencement Date.

22. ANNUAL RENT INCREASE

The Monthly Base Rent shall be increased at the end of each calendar year by an amount equal to three and one-half percent (3-1/2%) of the Monthly Base Rent then due and payable, and the total shall become the Monthly Base Rent for the succeeding calendar year.

23. NOTICES

All notices ("Notices") under this Lease shall be in writing and delivered in person, sent by a nationally recognized overnight delivery service, or sent by registered or certified mail, return receipt requested, postage prepaid, to Owner at the places set forth in Article A.1.n. and to Tenant at the Premises, or at such other places as may be set forth in Article A.1.j. If a properly sent Notice is delivered to the place to which it is properly addressed and is refused, or if Tenant's address has been changed without notice to Owner, the Notice shall nevertheless be effective when refused or when delivery to the incorrect address was attempted.

24. ASSIGNMENT

Tenant shall not assign this Lease or sublet the Premises or any part thereof without first obtaining Owner's written consent which shall not be delayed nor unreasonably withheld. Owner, in making its decision, may consider, without limitation, the proposed use by the prospective subtenant or assignee, its credit worthiness, its general business reputation, and whether the proposed subtenant's or assignee's use of the Premises would add costs for compliance with the requirements of the Americans with Disabilities Act and any amendments thereto. No such assignment or subletting shall relieve Tenant of Tenant's liability under the Lease. Consent to any such assignment or subletting shall not operate as a waiver of the necessity for a consent to any subsequent assignment or subletting, and the terns of such consent shall be binding upon any person holding by, under or through Tenant. In no event shall a sublessee or assignee of Tenant sublet or assign any interest in this Lease ***without first obtaining Owner's written consent***. In the event of an assignment or subletting which requires Owner's time and/or expense, Tenant shall compensate Owner for such reasonable expenses, including attorneys' fees. ***Notwithstanding the foregoing, "sublet" and "assign" shall not be deemed to include any transfer, assignment or subletting of the Premises (or any portion thereof) to any entity which controls, is controlled by, or is under common control with Tenant; provided that such entity (and the others referred to in this subparagraph) can reasonably be shown to have a financial strength sufficient to meet its obligations under this lease; to any such entity which results from a merger of or consolidation with Tenant; or to any such entity which acquires substantially all of the assets of Tenant, as a going concern, with respect to the business that is being conducted in the Premises; nor shall "sublet" or "assignment" include the transfer of the beneficial ownership or effective voting control of Tenant from the person(s) having effective voting control as of the date of Tenant's execution of this Lease, where such transfer occurs in connection with any bona fide financing or capitalization for the benefit of Tenant.***

25. SECURITY DEPOSIT

Upon the execution of this Lease, Tenant shall deposit with Owner the sum specified in Article A.1.l. as security for the full and faithful performance of each and every term, provision, covenant, and/or condition of this Lease (the "Security Deposit"). If Tenant defaults with respect to any term, provision, covenant or condition of this Lease, including, but not limited to, the payment of Rent, Owner may use, apply or retain the whole or any part of the Security Deposit for the payment of any Rent or other sum for which Tenant may be in default. Tenant shall not be entitled to any interest on the Security Deposit, and Owner may commingle the Deposit with Owner's own funds. In the event Owner should apply any or all of the Security Deposit to the payment of any sum in default, or any other sum which Owner may be required to spend by reason of Tenant's default, or other provision of this Lease, Tenant shall pay to Owner, within fifteen (15) days after receipt of Notice from Owner, an amount equal to the sums so expended in order to replenish the Security Deposit. Failure to do so shall be an Event of Default under this Lease. Should Tenant fully and faithfully comply with all of the covenants and conditions of this Lease, the Security Deposit

shall be returned to Tenant (or, at the option of Owner, to the last assignee of Tenant's interest in this Lease) at the expiration of the Lease Term.

26. FORCE MAJEURE

In the event either Owner or Tenant shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles or industrial disturbance, inability to procure materials, failure of power, delays in the issuance of permits, restrictive governmental laws or regulations, riots, insurrection, war or any reason of a like nature, pestilence, plague, acts of God or other similar industry-wide or building-wide causes beyond the control of Owner and/or not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of such delay, provided that the provisions hereof shall not operate to excuse Tenant from prompt payment of Monthly Base Rent, Estimated Additional Rent, Additional Rent, or any other payments required by Tenant under the terms of this Lease.

27. OCCUPANCY AND SURRENDER OF POSSESSION

Tenant shall be entitled to occupy the Premises at the Commencement Date. Occupancy prior to the Commencement Date shall obligate the Tenant for rent as per Article A.1.g., as well as all other Tenant obligations as provided for in this Lease. Tenant shall be conclusively deemed to occupy the Premises at such time as Tenant begins to locate within the Premises Tenant's furniture, fixtures, equipment or personnel. Tenant shall have no right to occupy the Premises prior to the Commencement Date without the prior written consent of Owner. Upon expiration of the Lease Term, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises to Owner.

28. TAX ON RENTAL AND PERSONAL PROPERTY

Tenant shall pay all taxes on the Rent, such as the Hawaii General Excise Tax (presently 4%) and any tax due on account of the receipt of such tax. Additionally, if any governmental authority or unit under any present or future law effective at any time during the term of this Lease shall in any manner levy a tax on rentals payable under this Lease, or a conveyance tax payable on account of this Lease, or a tax on rentals accruing from use of the Premises under this Lease, or a tax in any form against Owner because of or measured by income derived from the leasing or rental of the Premises, Tenant shall pay to Owner, immediately upon written notice, as Additional Rent, an amount equal to such tax paid by Owner, and for Tenant's default in paying such Additional Rent, Owner shall have the same remedies as upon failure to pay Rent. In the event that it shall not be lawful for Tenant to pay such tax, the rental payable to Owner under this Lease shall be revised to net Owner the same net rental after imposition of any such tax as would have been payable to Owner prior to the imposition of any such tax. Tenant shall not be liable to pay any amount because of income tax of a general nature applicable to Owner's various interests or sources of

income. Tenant shall pay before delinquency all taxes that may be due on account of Tenant's personal property.

29. NOTICE OF DEFAULT TO OWNER AND MORTGAGEE AND RIGHT TO CURE

If Owner shall fail to perform any covenant, term or condition of this Agreement required to be performed by Owner, Tenant shall deliver or send Notice thereof to Owner, which Notice shall specifically set forth the nature of the nonperformance by Owner and shall give Owner thirty (30) days within which to cure such default or non-performance, or if such default cannot be cured within that time, then such additional time as may be necessary if, within such thirty (30) days, Owner has commenced and is diligently pursuing the remedies necessary to cure such default. Said Notice of default shall be a condition precedent to the institution by Tenant of any judicial proceedings for non-performance or default against Owner. Tenant agrees to give any mortgagee and/or trust deed holders (of which it has received notice), a copy of any Notice of default served upon Owner, such copy to be sent by certified mail, return receipt requested. Tenant further agrees that if Owner shall fail to cure such default within the time provided for in this Lease, then the mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to cure such default or, if such default cannot be cured within that time, then such additional time as may be necessary if, within such thirty (30) days, any mortgagee and/or trust deed holder has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued. At the expiration of all cure periods, if Owner's default still has not been cured, Tenant may terminate this Lease upon five (5) days Notice to Owner.

30. OWNER'S LIABILITY

Anything in this Lease to the contrary notwithstanding, covenants, undertakings and agreements herein made on the part of Owner are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Owner personally or the assets of Owner except Owner's interest in the Premises, the Building and the Property, but are made and intended for the purpose of binding only the Owner's interest in the Premises, the Building and the Property, as the same may from time to time be encumbered. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against, Owner or its partners or their respective heirs, legal representatives, successors, and assigns on account of the Lease or on account of any covenant, undertaking or agreement of Owner in this Lease contained.

31. TRANSFER OF OWNER'S INTEREST

In the event of any transfer or transfers of Owner's interest in the Premises, the Building or the Property, other than a transfer for security purposes only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of

Owner accruing from and after the date of such transfer (subject to transfer of the Security Deposit to the transferee) and such transferee shall have no obligation or liability with respect to any matter occurring or arising prior to the date of such transfer. This Lease will not be affected by any transfer by Owner. Tenant agrees to attorn to the transferee if so requested, so long as such transferee assumes Owner's obligations under the Lease from and after the transfer date. ***Notwithstanding anything to the contrary contained herein, Owner shall be released from future liability if, and only if, transferee agrees, in writing, to assume Owner's obligations under this Lease from and after the date of transfer. Nothing contained in this paragraph B(31) shall release Owner from its obligations or liabilities under this Lease that accrue before the date of transfer.***

32. HAZARDOUS SUBSTANCES

Except as is reasonable and normal in connection with Tenant's permitted use of the premises and then in conformity with all applicable laws, rules, and regulations, Tenant hereby represents and warrants to Owner that Tenant shall not generate, store or dispose on the Premises or the Property any hazardous substances nor transport the same to or over the Premises or the Property. "Hazardous substance" shall be interpreted broadly to include, but not be limited to, substances designated as hazardous under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1257, et seq., the Clean Air Act, 42 U.S.C. Section 9601, et seq., and any substance which after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or indirectly by ingestion through food chains, will, or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities. Owner represents and warrants that to the best of Owner's knowledge there are no hazardous substances now incorporated in the Building or significant contamination of the Property. Tenant and Owner shall hold each other harmless from and indemnify the other from and against any damage, loss, reasonable expenses or liability resulting from any breach of their representations and warranties, including all reasonable attorneys' fees and costs incurred as a result thereof. Tenant shall not be responsible ***and Owner shall hold Tenant harmless from all*** costs incident to or damages arising from contamination it did not create, in whole or in part. Owner states that there now is only one underground storage tank on the Property, a diesel tank which supplies the emergency generator for Phase I. The gasoline tanks (two or three in number) which were on the Property at the time of its acquisition have been removed, the soil checked for contamination, and any necessary remedial measures taken. Any possible contamination from the foregoing diesel tank is not the responsibility of Tenant, and, to the contrary, is the full responsibility of Owner.

33. NO WAIVER

Owner's ***or Tenant's*** failure to take advantage of any default or breach of covenant on the part of ***the other*** shall not be construed as a waiver thereof, nor shall any custom or practice which may grow up between Owner and Tenant in the course of administering

this Lease be construed to waive or to lessen the right of Owner ***or Tenant*** to insist upon the performance by ***the other*** of each and every term, condition, or covenant hereof, or to waive or lessen the right of Owner to exercise any of its remedies upon any default by ***the other***. A waiver by Owner of a particular breach or default shall not be deemed to be a waiver of the same or any other subsequent breach of default. The acceptance of Rent or any other sum due hereunder shall not be, or be construed to be, a waiver of any breach of any term, covenant, or condition of this Lease, whether or not Owner has knowledge of such breach at the time of such acceptance.

34. SECURITY

No attempt shall be made by Owner to provide full security, and Owner shall not be responsible nor held liable for any lack of security or loss due to lack of full security. Some general policing by a security firm and/or by Owner's personnel as a deterrent to crime will be coordinated by Owner for the benefit of all tenants ***but such security personnel shall not, except in case of an emergency, enter Premises*** . Tenant expressly waives any and all rights it may have against Owner for the actions or lack thereof of such firm and personnel.

35. HOLD OVER

If Tenant shall continue its occupancy of the Premises after the expiration of the Lease Term, the occupancy shall not be deemed to extend or renew the term of this Lease, and such occupancy shall constitute a tenancy from month to month, subject to all of the terms of this Lease, except the term, and except that the Rent for each month of continued occupancy shall be double the Rent for the last full month of the Lease Term. Tenant shall also be liable for Owner's incidental and consequential damages sustained by virtue of Tenant's holdover. The term "consequential damages" as used herein refers only to those damages suffered by Owner as a direct and proximate consequence of Tenant's failure to vacate the Premises promptly at the end of the Lease Term.

36. ENTIRE AGREEMENT

The provisions of this Lease constitute and are intended to constitute the entire agreement of Owner and Tenant regarding the Premises. Any amendment or modification of this Lease, including any waiver of this Article, must be in writing and signed by both Owner and Tenant.

37. SEVERABILITY

If for any reason any of the provisions of this Lease shall be unenforceable or ineffective, all of the other provisions shall remain in full force and effect.

38. INTERPRETATIONS

Captions, headings, the index and titles to articles are not a part of this Lease, are used in this document for reference only, and have no effect upon the construction or

interpretation of any part of this Lease. A provision of this Lease which requires a party to perform an action shall be construed so as to require the party to perform the action or to cause the action to be performed; a provision which prohibits a party from performing an action shall be construed so as to prohibit the party from performing the action or permitting another to perform the action for it. "Including" means "including, but not limited to." The singular includes the plural, and the plural includes the singular. "Any" means "any and all". "Person" means a natural person or any legal entity. All exhibits to this Lease shall be deemed to be a part of this document.

39. ATTORNEYS' FEES

In the event any action, suit or proceeding is commenced under or in connection with this Lease, or for recovery of possession of the Premises, the losing party shall pay to the prevailing party in any such action, suit or proceeding all attorneys' fees incurred in connection therewith, together with all court costs and litigation expenses of said prevailing party, and such costs and attorneys' fees shall be deemed to have accrued as of the date the first remedial action is taken by the prevailing party.

40. BINDING EFFECT

This Lease shall be binding upon the parties and their respective permitted successors and assigns.

41. MODIFICATION FOR LENDER

If, in connection with obtaining construction, interim, or permanent financing or refinancing for the Property or Building, the lender shall request reasonable modifications or documentation in this Lease as a condition to such financing or refinancing, or if Owner needs financing documentation executed by Tenant in favor of a third party to facilitate financing of Special Improvements in Premises, Tenant shall not unreasonably withhold, delay, or defer its signature or its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder, adversely affect the leasehold interest created hereby or Tenant's rights hereunder, ***and Owner pays, within five (5) days of receipt of Tenant's written demand, Tenant's reasonable attorney's fees related to any such modification.***

42. ACCORD AND SATISFACTION

No payment by Tenant or receipt by Owner of a lesser amount than any payment of Rent, Estimated Additional Rent, or Additional Rent stipulated in this Lease shall be deemed to be other than on account of the earliest stipulated Rent or Additional Rent due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent, Estimated Additional Rent, or Additional Rent be deemed an accord and satisfaction. Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such Rent, Estimated Additional Rent, or Additional Rent or pursue any other remedy in this Lease, at law or in equity.

43. CALCULATION OF TIME

In computing any Notice or other period of time prescribed or allowed by any provision of this Lease, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday recognized by the federal government, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday recognized by the federal government. All notice or other periods expire as of 5:00 p.m. (local time in Honolulu, Hawaii) on the last day of the notice or other period.

44. COUNTERPARTS

This Lease may be executed in counterparts and each counterpart constitutes an original document.

45. WAIVER OF TRIAL BY JURY [omitted in original]

46. FURTHER DEVELOPMENT

Owner intends to further develop the Building and Property as well as certain adjoining property. Tenant agrees to such modifications to this Lease as may be required by Owner in completing the above developments, so long as the Enclosed Area and the Open Area (if any) are not thereby disturbed, Tenant's use of and/or access to the Premises are not materially impaired, Tenant's obligations ***including the payment of any Rent*** under this Lease are not increased ***and Owner pays within five (5) days of receipt of Tenant's written demand, Tenant's reasonable attorney's fees related to any such modification.*** Tenant agrees to join with Owner in executing any documents as are reasonably necessary in effectuating the intent of this Article, including any amendments to the Declarations filed when the Property was submitted to the Horizontal Property Regime Act.

47. CORPORATE AUTHORITY

If Tenant is a corporation, each individual executing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of Tenant, in accordance with a duly adopted resolution of the Board of Directors of Tenant and in accordance with the bylaws of Tenant, and that this Lease is binding upon Tenant in accordance with its terms. At Owner's request, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Owner a certified copy of a resolution of the Board of Directors of Tenant authorizing or ratifying the execution of this Lease.

48. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Hawaii.

49. RECORDING

This Lease shall not be recorded by either Owner or Tenant. However, if a party shall request the other party to execute a short form lease or memorandum of lease, the other party shall do so within twenty (20) days after the request. The short form lease or memorandum of lease shall be in a proper form for recording and may contain the names of the parties, the Lease Term, the description of the Premises, and the nature of any options for renewal or additional space. Owner will supply the short form lease and if the execution thereof is requested by Tenant, Tenant shall pay Owner all of Owner's costs for the preparation and recordation of such, including, without limitation, attorneys' fees.

50. CONSENTS, APPROVALS AND ATTORNEY'S FEES

When consents or approvals of Owner or Tenant are required pursuant to the terms of this Lease, such consents or approvals shall not be delayed or unreasonably withheld. A requirement to pay attorney's fees shall be deemed to require only payment of reasonable attorney's fees.

51. TIME IS OF THE ESSENCE

Time is of the essence of this Lease.

52. SURVIVAL

All obligations of Tenant or Owner which may accrue or arise during the term of this Lease or as a result of any act or omission of Tenant or Owner during said term shall, to the extent they have not been fully performed, satisfied or discharged, survive the expiration or sooner termination of this Lease.

IN WITNESS WHEREOF the parties have executed this Lease on the day and year first above written.

OWNER:	TENANT:
AIPA PROPERTIES, L.L.C., By its Managing Member, AIPA CORPORATION	PACIFIC INTERNET EXCHANGE CORPORATION
By: /s/ RICHARD H. ZEGAR	By: /s/ LAMBERT P. ONUMA
Its: Vice President	Its: President

LEASE MODIFICATION AGREEMENT NO. 1

This Agreement, dated as of the 1 day of February, 2000, is by and between AIPA PROPERTIES, L.L.C., a Hawaii Limited Liability Company ("Owner") and PACIFIC INTERNET EXCHANGE CORPORATION ("Tenant") and amends that certain lease ("Lease") between the parties dated November 1, 1999 covering 5,357 square feet of Enclosed Area.

Now, therefore, for valuable consideration the parties hereto amend the Lease as follows effective February 1, 2000:

1. Article A.1.m. shall be amended to read as follows:

   m. Parking: Tenant anticipates that the parking which can be accommodated in its Open Area will be sufficient to meet its needs for the Enclosed Area. Additional parking spaces may be leased from Owner at then prevailing rates, subject to availability.

In all other respects the amended Lease is hereby ratified and confirmed.

IN WITNESS WHEREOF the parties hereto have executed this Lease Modification Agreement No. 1 as of the day and year first above written.

OWNER:
AIPA PROPERTIES, L.L.C., By Its Managing Member,
AIPA CORPORATION

By: /s/ RICHARD H. ZEGAR

Richard H. Zegar
Its: Vice President

TENANT:
PACIFIC INTERNET EXCHANGE CORPORATION

By: /s/ RICHARD H. KALBRENER

Its: _____

LEASE MODIFICATION AGREEMENT NO. 2

This Agreement, dated as of the 6th day of November 2000, is by and between AIPA PROPERTIES, L.L.C., a Hawaii Limited Liability Company ("Owner") and PIHANA PACIFIC, INC., a Delaware corporation f.k.a. Pacific Internet Exchange Corporation, a Delaware corporation, ("Tenant") and amends that certain lease ("Lease") between the parties dated November 1, 1999. Lease was previously amended by Lease Modification Agreement No. 1 (LMA No. 1) dated February 1, 2000.

Tenant requires an increase in its open area to be used for additional air conditioning equipment. Tenant advises that such equipment does not require an enclosure but does need to be located in fairly close proximity to Premises. Tenant's requirement is to be met by Owner's construction of an elevated platform at the Ewa/mauka corner of Owner's Phase II structure, with the Lease being modified as follows effective upon Substantial Completion of such platform:

1. Article A.1.b (2) shall read as follows: "Agreed Open Area: Four Thousand Four Hundred Nine (4,409) square feet." Tenant's Open Area previously was 2,559 sq. ft.; the elevated platform adds 1,850 sq. ft. 2,559 + 1,850 = 4,409 sq. ft.

2. Article A.1.e. shall have the following words added: "Upon Substantial Completion of the elevated platform, Monthly Base Rent shall be increased One Thousand Four Hundred Twenty-five and No/100 Dollars ($1,425.00)."

3. A new article, A.4. shall be added and shall read as follows: "Construction and maintenance of the elevated platform shall be performed by Owner at Owner's expense. The acquisition, installation and maintenance of the air conditioning equipment shall be the responsibility of Tenant, and so likewise all connections between such air conditioning equipment and Premises (collectively the "Installation"). Details of the Installations shall be subject to Owner's approval. Both Owner and Tenant shall be obligated to perform their respective maintenance operations such that all equipment and facilities and the elevated platform are maintained in first class condition."

4. Details of the proposed elevated platform are shown on the attached Exhibit C-LMA No. 2. This drawing was reduced to half-size thus the actual scale is 1/16 = 1'-0".

Pacific Internet Exchange Corporation, a Delaware corporation has undergone a corporate name change to Pihana Pacific, Inc., a Delaware corporation. It is the same legal entity with a different registered corporate name. Pihana Pacific, Inc. agrees and confirms that it is bound by the Lease and that the Lease, as amended by LMA No. 1 and this LMA No. 2, is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF the parties hereto have executed this Lease Modification Agreement No. 2. as of the day and year first above written.

OWNER:	TENANT
AIPA PROPERTIES, L.L.C., By Its Managing Member, AIPA CORPORATION	PIHANA PACIFIC, INC. a Delaware corporation
By: /s/ RICHARD H. ZEGAR	By: /s/ RICHARD H. KALBRENER
Its: Vice President	Its: Richard H. Kalbrener President & CEO

LEASE MODIFICATION AGREEMENT NO. 3

This Agreement, dated as of the 18th day of July 2001, is by and between AIPA PROPERTIES, L.L.C., a Hawaii Limited Liability Company ("Owner") and PIHANA PACIFIC, INC., a Delaware corporation f.k.a. Pacific Internet Exchange Corporation, a Delaware corporation, ("Tenant") and amends that certain lease ("Lease") between the parties dated November 1, 1999. Lease was previously amended by Lease Modification Agreement No. 1 ("LMA No. 1"), dated February 1, 2000 and by Lease Modification Agreement No. 2 ("LMA No. 2") dated November 6, 2000.

Tenant requires an increase in its open area for additional electrical equipment. The most practical place for this equipment is immediately behind Tenant's existing ground floor space as shown in Exhibit A – LMA No. 2 Tenant agrees to lease aforesaid Open Area with the Lease being modified as follows:

1. Article A.1.b(2) shall read as follows: "Agreed Open Area: Five Thousand Two Hundred Ninety-Nine (5,299) square feet." Tenant's Open Area previously was 4,409 sq. ft.; the electrical equipment area adds 890 sq. ft. 4,409 + 890 = 5,299 sq. ft.

2. Article A.1.e. shall have the following words added: "Monthly Base Rent shall be increased Four Hundred Eighty-Nine and No/100 Dollars ($489.00)."

3. Article A.1.f shall have the following words added: "Tenant's monthly charge for Estimated Additional Rent shall be increased Fifty-three and No/100 Dollars ($53.00).

4. A new article, A.5. shall be added and shall read as follows: "Tenant is responsible for installation of all electrical equipment used by Tenant in the increased Open Area. At termination of Tenant's lease Owner may require Tenant to remove equipment installed in conjunction with this Lease Modification Agreement. Owner has previously agreed to install approximately 6" of reinforced concrete in the Open Area in conjunction with other paving projects by the Owner in the area. Tenant is responsible for any additional costs generated by Tenant's requirements such as increase reinforcing of concrete under future generator pads or any special leveling or grading required for Tenant's access to previously installed electrical equipment.

In all other respects the amended Lease is hereby ratified and confirmed.

IN WITNESS WHEREOF the parties hereto have executed this Lease Modification Agreement No. 3 as of the day and year first above written.

OWNER:

AIPA PROPERTIES, L.L.C., By Its Managing Member,
AIPA CORPORATION

By: /s/ RICHARD H. ZEGAR

Its: Vice President

TENANT:

PIHANA PACIFIC, INC.
a Delaware corporation

By: /s/ JOHN R. SAVAGEAU

Its: John R. Savageau

Exhibit 10.74

THIRD MODIFICATION TO GROUND LEASE

THIS THIRD MODIFICATION TO GROUND LEASE (this "**Modification**") is made as of September 30, 2002 by and between ISTAR SAN JOSE, LLC, a Delaware limited liability company ("**Lessor**"), and EQUINIX, INC., a Delaware corporation ("**Lessee**").

RECITALS

A. Lessor and Lessee entered into that certain Ground Lease dated as of June 21, 2000 (the " **Original Lease**"), as amended by that certain First Modification to Ground Lease dated as of September 26, 2001, that certain Second Modification to Ground Lease dated as of March 20, 2002 (the " **Second Amendment**"), and that certain letter agreement (the "**Letter Agreement**") dated September 24, 2002 (collectively, the "**Lease**"), which Lease covers approximately 78.446 acres of unimproved real property, located in the City of San Jose, County of Santa Clara, State of California, as more particularly described in the Lease. Capitalized terms used but not defined herein shall have the meanings set forth in the Lease.

B. Concurrently with the execution of the Original Lease, Lessor and Lessee executed a Memorandum of Lease and Purchase Option, dated as of June 21, 2000 (the "**Original Memorandum**"), which Original Memorandum was recorded on June 21, 2000, as Document No. 15286834 in the Official Records of Santa Clara County, California (the "**Official Records**"). The Original Memorandum was amended and restated by that certain Amended and Restated Memorandum of Lease and Purchase Option dated as of October 1, 2001 and recorded on _____, 2001 as Document No. _____ in the Official Records.

C. Lessee, by an Option Exercise Notice dated September 24, 2002, has exercised its option to reduce the size of the Premises as of October 1, 2002 (the "Premises Reduction Date") pursuant to the Second Amendment and the Letter Agreement and now wishes to make certain modifications to the Lease necessary to reflect this reduction of the Premises as contemplated by Section 7(a) of the Second Amendment, and certain other modifications to the Lease.

D. Lessor is willing to agree to such changes to the Lease on the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the agreements of Lessor and Lessee herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessor and Lessee hereby agree to modify the Lease as follows:

1. DEFINITIONS

From and after the Premises Reduction Date, the following terms are added as defined terms under the Lease and to the extent that any of the following terms are duplicative of existing defined terms in the Lease, the following terms shall replace in their entirety such existing defined terms:

(a) "Aggregate Permitted Square Footage" shall mean five hundred fifty-nine thousand eight hundred (559,800) gross square feet;

(b) "Base Amount" shall mean One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00).

(c) "Excluded Premises" shall mean the Proposed Excluded Premises set forth in the Letter Agreement;

(d) "Initial Improvements" shall mean all of the Improvements constituting the Project to be developed, designed, constructed, planted or installed pursuant to the Project Development Rider, including, without limitation, Buildings containing approximately five hundred fifty-nine thousand eight hundred (559,800) gross square feet;

(e) "Initial Investment Amount" shall mean Forty-Seven Million and 00/100 Dollars ($47,000,000.00);

(f) "Projected Building Density" shall mean approximately five hundred fifty-nine thousand eight hundred (559,800) gross square feet of Building Area;

(g) "Premises" except as otherwise specifically provided in this Modification, the Second Amendment or the Letter Agreement, all references to the Premises shall be deemed to apply to the Retained Premises only; and

(h) "Retained Premises" shall be deemed to be as shown on Exhibit A attached hereto.

2. RENT MODIFICATION

Notwithstanding anything to the Contrary in the Lease, as of the Premises Reduction Date, Article 9 of the Original Lease shall be deemed deleted in its entirety, and Section 4.1 of the Original Lease (as amended by Section 1(c)(i) of the Second Amendment) shall be deemed deleted and replaced with the following:

"(a) During the period commencing on the Premises Reduction Date and continuing thereafter until the Expiration Date, Lessee shall pay Lessor annual base rent of Four Million Seven Hundred Ninety-One Thousand Nine Hundred Sixty-Seven and 31/100 Dollars ($4,791,967.31), adjusted in the manner provided in Section 4.1(b) and (c) below ("**Annual Base Rent**"). Lessee shall pay Annual Base Rent in advance in equal monthly installments commencing on the Premises Reduction Date (representing initial monthly

payments of $399,330.61); provided, however, that Annual Base Rent for any partial month during the period between the Premises Reduction Date and the Expiration Date shall be prorated on the basis of a thirty (30) day month.

(b) Notwithstanding anything to the contrary set forth herein:

(1) Lessor acknowledges that Lessee has prepaid all Annual Base Rent owing for the period from October 1, 2002 through December 31, 2003 and Lessee shall have no further obligation for Annual Base Rent due hereunder for such period.

(2) During the period from January 1, 2004 through June 30, 2004, Lessee shall only be obligated to pay on a current basis one-half of the monthly Annual Base Rent specified pursuant to Section 4.1(a) above (representing a monthly payment of $199,665.30, subject to adjustment in the manner provided in Section 4.1(c) below), and during the period from July 1, 2004 through December 31, 2004 Lessee shall only be obligated to pay on a current basis three-quarters of the monthly Annual Base Rent specified pursuant to Section 4.1(a) above (representing a monthly payment of $299,497.96, subject to adjustment in the manner provided in Section 4.1(c) below). Any portion of the Annual Base Rent that is not paid on a current basis pursuant to the provisions of this Section 2.(b)(2) shall be deferred, shall be referred to herein as "Deferred Annual Base Rent" and shall be paid as provided in Sections 2.(b)(3) and (4) below.

(3) For each quarter of 2004 (e.g. January-March ("Q1"), April-June ("Q2"), July-September ("Q3") and October-December ("Q4")), Lessee shall pay to Lessor within thirty (30) days after the end of such quarter an additional sum (the "Cash Flow Reimbursement") equal to the lesser of (x) the cumulative accrued but unpaid amount of Deferred Annual Base Rent, and (y) an amount equal to 15% of Lessee's Aggregate Excess Cash, as defined below, for the applicable quarter. The Cash Flow Reimbursement shall be considered part of the Annual Base Rent for the purposes of this Lease. Aggregate Excess Cash for each applicable quarter shall mean the aggregate amount of "Cash" and "Cash Equivalents" in excess of $20,000,000 as set forth in the certified, consolidated financial statements of Lessee and its "Restricted Subsidiaries," as defined in the Credit Agreement described below, that Lessee is required to provide under the Credit Agreement. "Credit Agreement: shall mean that certain Amended and Restated Credit and Guaranty Agreement dated as of September 30, 2001, between Lessee and _____, as further amended on or about the date of the Recapitalization (as defined below).

(4) Notwithstanding anything to the contrary in this subparagraph (b), each monthly payment of the Annual Base Rent beginning with the monthly payment of Annual Base Rent due on October 21, 2005 through the monthly payment due on June 20, 2015 shall be increased by the quotient obtained by dividing the unpaid Deferred Annual Base Rent as of December 31, 2004 by one hundred and sixteen (116).

(c) Annual Base Rent shall be adjusted on the third (3rd) anniversary of the Premises Reduction Date and every five (5) years thereafter during the Term (each, an "**Adjustment Date**"), by multiplying the then-current Annual Base Rent by the Annual Base Rent Adjustment Percentage. For example, if the then-current Annual Base Rent were Four Million Seven Hundred Ninety-One Thousand Nine Hundred Sixty-Seven and 31/100 Dollars ($4,791,967.31) and the Annual Base Rent Adjustment Percentage were one hundred twelve and one-half percent (112.5%), the new Annual Base Rent would be Five Million Three Hundred Ninety Thousand Nine Hundred Sixty-Three and 22/100 Dollars ($5,390,963.22). For purposes of this Section 4.1(b), the following terms shall have the following meanings:

(i) The "Annual Base Rent Adjustment Percentage" shall be the sum of one hundred percent (100%) plus the increase in the Ending Index over the Beginning Index, expressed as a percentage; provided, however, that in no event shall the cumulative increase on any Adjustment Date in the Annual Base Rent payable hereunder be less than two percent (2%) per annum, compounded on an annual basis, or exceed three and one-half percent (3.5%) per annum, compounded on an annual basis. Lessee expressly understands and agrees that the Annual Base Rent payable hereunder shall not be subject to reduction if on any Adjustment Date (including, without limitation, any Adjustment Date occurring during a Renewal Term) the Ending Index is lower than the Beginning Index.

(ii) The "Ending Index" shall be the CPI for the second calendar month preceding the Adjustment Date. For example, if the Adjustment Date were October 1, 2010, the Ending Index would be the CPI for August, 2010.

(iii) The "Beginning Index" shall be the same as the Ending Index used to calculate the previous adjustment (for example, if the Adjustment Date were October 1, 2010, the Beginning Index would be the CPI for August, 2005); except that, for purposes of calculating the first adjustment to the Annual Base Rent, the Beginning Index shall be the CPI for the month of April, 2000."

3. IMPOSITIONS AND OTHER COSTS

Article 5 of the Lease and Subparagraph 1(c)(i) of the Second Amendment are hereby amended such that Lessee shall continue to pay all Impositions and other amounts to be paid by Lessee under the Lease with respect to the Retained Premises; however, regardless of whether Impositions are imposed upon the Original Premises as a whole, Lessee shall pay or fund when due the greater of: (i) fifty (50%) percent of the Impositions allocable to the Original Premises; or (ii) the portion of such Impositions attributable to the Retained Premises (if ascertainable). Lessee expressly acknowledges and agrees that Impositions include the City of San Jose Community Facilities District #6 (Great Oaks-Route 85) Special Tax Bonds.

4. OTHER MODIFICATIONS

(a) Clause (ii)(C) in the definition of "Material Default" in Section 1 is hereby deleted.

(b) Section 7.1(d) of the Lease is hereby deleted in its entirety along with the corresponding references to said Section 7.1(d) or the defined term Minimum Initial Improvements in any other section of the Lease. Lessee shall have no obligation to build any Improvements on the Premises.

(c) Section 7.2(a) of the Lease is hereby deleted and replaced with the following: "The Project shall be comprised of one or more buildings containing approximately five hundred fifty-nine thousand eight hundred (559,800) gross square feet."

(d) Notwithstanding any contrary provision in Section 7.3(b) of the Lease, from and after the Premises Reduction Date, Lessee shall have no obligation to perform any of the obligations that may exist under the Purchase Agreement as they apply to the Excluded Premises, except that Lessee shall continue to have the obligation, if any, (whether or not such obligations involve or relate to the Excluded Premises) to comply with the following provisions of the Purchase Agreement, and Lessor shall have no responsibility therefor: (i) Article 9; (ii) Section 6.6; (iii) Section 6.8; (iv) subsection (2) of Section 6.9; and (v) subsection (d) of Section 6.2. Notwithstanding the foregoing, with respect to subsection 6.2(d) of the Purchase Agreement: (i) in the event that any of the costs, expenses, liabilities or obligations which are the responsibility of the Buyer under such subsection arise solely from the development or improvement of the Excluded Premises, and Lessee derives no benefit from such development or improvement, Lessor shall bear sole responsibility for compliance with subsection 6.2(d) in connection with such costs, expenses, liabilities or obligations; and (ii) to the extent that the costs, expenses, liabilities or obligations of Buyer under such subsection arise as a result of development or improvements undertaken by Lessor or Lessee pursuant to a cost-sharing arrangement set forth in the Related Agreements, Lessor and Lessee shall allocate such costs, expenses, liabilities and obligations as set forth in in the Related Agreements (and neither party shall be entitled to waive responsibility therefor as a result of this subparagraph 4(d)).

(e) Section 14.1(d) of the Lease is hereby deleted in its entirety.

(f) Section 22.(a) of the Lease is hereby deleted in its entirety along with the definition of "Available Cash" in Section 1 of the Lease and all corresponding references to such sections or terms elsewhere in the Lease.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS

Lessee hereby represents, warrants and covenants to Lessor as follows:

(a) Lessee is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to transact business in the State of California.

(b) Except as described in Section 7(b) below, Lessee has taken all necessary action to authorize the execution, delivery and performance of this Modification. This Modification constitutes the legal, valid and binding obligation of Lessee.

(c) Lessee has the right, power, legal capacity and authority to enter into and perform its obligations under this Modification, and, except as provided in Section 7(b) below, no approval or consent of any Person is required in connection with Lessee's execution and performance of this Modification that has not been obtained. The execution and performance of this Modification will not result in or constitute any default or event that would be, or with notice or lapse of time or both would be, a default, breach or violation of the organizational instruments governing Lessee or any agreement or any deed restriction or order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject.

(d) Lessee is the sole owner and holder of the leasehold estate and leasehold interest created by the Lease, and Lessee has not made or agreed to make any assignment, sublease, transfer, conveyance, encumbrance, or other disposition of the Lease, Lessee's leasehold estate or any other right, title or interest under or arising by virtue of the Lease.

(e) Lessee has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they become due, or (vi) made an offer of settlement, extension or composition to its creditors generally (each, a "Bankruptcy Event").

(f) At the time of the execution of this Agreement, Lessee is generally paying its debts as they become due, and the aggregate value of Lessee's assets at fair value exceeds the aggregate value of Lessee's liabilities.

Lessee shall take all actions necessary to ensure that each of the representations, warranties and covenants contained in this Paragraph 5 remain true and correct in all material respects at all times during the period between the date hereof and the date on which the conditions described in Section 7 below have been satisfied.

6. BROKERS

Lessor and Lessee each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating or making of this Modification, and each party agrees to indemnify and

hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this Modification as a result of the actions of the indemnifying party.

7. EFFECTIVENESS OF THIS AMENDMENT

The effectiveness of this Amendment is expressly conditioned upon the following:

(a) Completion and closing of the acquisition and financing transactions described in Lessee's proxy statement dated December 10, 2002 (the "Recapitalization") on or before March 31, 2003 (the "Outside Recapitalization Date"). In connection with the requirements under the Lease for approval by Lessor of certain Transfers or Changes of Board Control, Lessor specifically approves the transactions contemplated by the Recapitalization.

(b) The approval on or before the date of the Recapitalization (the "Outside Lender Approval Date") of this Modification by Lessee's senior lenders. Lessee agrees to use its best efforts to obtain such approval, and to send written notice of same to Lessor immediately following receipt thereof by Lessee.

If, for any reason whatsoever, either (i) the Recapitalization does not close by the Outside Recapitalization Date, (ii) Lessee's senior lenders do not approve this Modification by the Outside Lender Approval Date, or (iii) Lessee has a Bankruptcy Event prior to the completion of the Recapitalization, then this Amendment shall be deemed null and void ab initio and the Premises Reduction Date shall be deemed not to have occurred.

8. MISCELLANEOUS

A. As amended hereby, the Lease is hereby ratified and confirmed in all respects and each party acknowledges that it does not know of a default thereunder by either party as of December __, 2002. In particular, Lessor and Lessee reaffirm their intention to prepare and execute the Related Agreements, and to make such further mutually acceptable reasonable changes to the Lease as necessary to implement and accomplish the intent of this Modification and the Second Amendment. Lessor and Lessee acknowledge and agree that from and after the date hereof, Lessee shall have no rights or obligations under the Lease with respect to the Excluded Premises, except for: (i) any obligations that, under the terms of the Lease, would survive the Termination Date; (ii) Lessee's obligations under the Second Amendment to approve, execute (if necessary) and be bound by the Related Agreements; and (iii) any other obligations of Lessee with respect to the Exclusion Conditions. In the event of any inconsistencies between the terms of this Modification and the Lease, the terms of this Modification shall prevail. This Modification shall bind and inure to the benefit of Lessor and Lessee and their respective legal representatives and successors and assigns

B. This Modification may be executed in counterparts each of which counterparts when taken together shall constitute one and the same agreement.

C. Except as set forth in this Modification, all terms and conditions of the Lease shall remain in full force and effect.

D. This Modification, with exhibits, is a fully-integrated agreement which, together with the Lease, contains all of the parties' representations, warranties, agreements and understandings with respect to the subject matter hereof.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Modification as of the date first above written.

LESSOR:

iSTAR SAN JOSE, LLC,
a Delaware limited liability company

By: TriNet Corporate Realty Trust, Inc.,
a Maryland corporation,
Its: Sole Member

By: /s/ JAY SUGARMAN

Name: Jay Sugarman

Title:

LESSEE:

EQUINIX, INC.,
a Delaware corporation

By: /s/ PHILIP J. KOEN

Name: Philip J. Koen

Title: President and COO

By:

Name:

Title:

Exhibit A

Premises
[to be attached]

Exhibit 10.75

REGISTRATION RIGHTS AGREEMENT

BY AND AMONG

EQUINIX, INC.

AND

THE INITIAL PURCHASERS NAMED HEREIN

Dated as of

December 31, 2002

TABLE OF CONTENTS

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of December 31, 2002 (this "Agreement"), by and among Equinix, Inc., a Delaware corporation ("Parent"), and the Purchasers named in the Securities Purchase Agreement, dated as of October 2, 2002 (the "Purchase Agreement"), by and among Parent, the Guarantors and such Purchasers (referred to herein as the "Initial Purchasers").

WHEREAS, the Initial Purchasers will acquire pursuant to the Purchase Agreement either (i) Parent's 14% Series A-1 Convertible Secured Notes due 2007 (the "Series A-1 Notes") and a warrant (the "Preferred Warrant") to purchase shares of Parent's Series A Convertible Preferred Stock, par value $0.001 per share (the "Preferred Stock"), or Parent's Series A-1 Preferred Stock, par value $0.001 per share (together with the Preferred Stock, the "Conversion Preferred Stock"), or (ii) Parent's 10% Series A-2 Convertible Secured Notes due 2007 (the "Series A-2 Notes") and warrants (the "Common Warrants") to purchase shares of Parent's common stock, par value $0.001 per share (the "Common Stock"), and (iii) warrants (the "Change in Control Warrants") to purchase shares of the Common Stock upon certain change of control events, all in a transaction exempt from the registration requirements of the Securities Act;

WHEREAS, certain of the Initial Purchasers and others will acquire warrants (the "Cash Trigger Warrants") to purchase shares of Common Stock if certain events of default occur under Parent's outstanding bank credit facility;

WHEREAS, it is a condition to the closing of the transactions contemplated by the Purchase Agreement that this Agreement be executed and delivered by the Parties; and

WHEREAS, Parent desires to provide for an orderly market in the Common Stock.

NOW, THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"A-1 Registrable Note Shares" means the shares of Common Stock issued or issuable upon conversion of the shares of Preferred Stock issued or issuable upon conversion of the A-1 Notes, that cannot otherwise be sold without registration under the Securities Act in any ninety-day period under Rule 144.

"A-2 Registrable Note Shares" means the shares of Common Stock issued or issuable upon conversion of A-2 Notes, that cannot otherwise be sold without registration under the Securities Act in any ninety-day period under Rule 144.

"Agreement" is defined in the preamble to this Agreement.

"Black-Out Period" means a period of not more than thirty days with regard to which Parent shall have furnished to the Holders of Registrable Securities a certificate signed by an executive officer of Parent stating, in the good faith judgment of the board of directors of Parent, it would be (a) materially detrimental to Parent and its stockholders for Parent to file a Registration Statement at such time or (b) a violation of the Securities Act for such Holders to sell shares pursuant to the applicable Registration Statement because of the existence of material non-public information that the board of directors has determined, in its good faith judgment, would be materially detrimental to Parent if disclosed.

"Business Day" means a day that is not a Saturday, a Sunday or a day on which banking institutions are required to be closed in City of New York, State of New York.

"Closing Date" means the date and time of the closing of the transactions contemplated by the Purchase Agreement.

"Common Stock" is defined in the recitals to this Agreement.

"Dollars" or the symbol, "$", means United States dollars.

"Exchange Act" means the Securities Exchange Act of 1934.

"GAAP" means generally accepted accounting principals as applied in the United States from time to time.

"Holders" means Note Holders, Warrant Holders and holders of Registrable Note Shares or Registrable Warrant Shares.

"Indemnified Person" is defined in Section 3.3.

"Indemnifying Person" is defined in Section 3.3.

"Initial Purchasers" is defined in the preamble to this Agreement.

"Initiating Note Holder" is defined in Section 2.1(a).

"Insufficient Amount" is defined in Section 2.3(a)(ii).

"Liquidated Damages" is defined in Section 3.5.

"NASD" means the National Association of Securities Dealers, Inc.

"Note Holder" means a holder of a Note.

"Notes" means the Series A-1 Notes and the Series A-2 Notes.

"Parent" is defined in the preamble to this Agreement.

"Participant" is defined in Section 3.1.

"Party" means each of Parent and the Initial Purchasers.

"Person" means an individual, trustee, corporation, partnership, limited liability Parent, joint stock company, trust, unincorporated association, union, business association, firm or other legal entity.

"Preferred Stock" is defined in the recitals to this Agreement.

"Prospectus" means the prospectus included in any Registration Statement (including any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Purchase Agreement" has the meaning ascribed to such term in the second introductory paragraph to this Agreement.

"Registrable Note Shares" means the A-1 Registrable Note Shares and the A-2 Registrable Note Shares.

"Registrable Securities" means the Registrable Note Shares and the Registrable Warrant Shares that cannot otherwise be sold without registration under the Securities Act in any ninety-day period under Rule 144.

"Registrable Warrant Shares" means shares of Common Stock (a) for which the Common Warrants, Change of Control Warrants or Cash Trigger Warrants are exercisable and (b) issued or issuable upon conversion of the shares of Preferred Stock issued or issuable upon exercise of the Preferred Warrants, in each case that cannot otherwise be sold without registration under the Securities Act in any ninety-day period under Rule 144.

"Registration Statement" means any registration statement of Parent that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"Rule 144" means Rule 144 under the Securities Act or any similar rule (other than Rule 144A) or regulation hereafter adopted by the SEC providing for offers and sales of securities made in compliance therewith by subsequent holders that are not affiliates of an issuer

of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 145" means Rule 145 under the Securities Act.

"Rule 405" means Rule 405 under the Securities Act.

"Rule 415" means Rule 415 under the Securities Act.

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

"Securities Act" means the United States Securities Act of 1933.

"Series A-1 Notes" is defined in the recitals to this Agreement.

"Series A-2 Notes" is defined in the recitals to this Agreement.

"Signing Price" means $0.306.

"Underwritten registration or underwritten offering" means a registration in which securities of Parent are sold to an underwriter for re-offering to the public.

"Warrant Holder" means a holder of a Warrant.

"Warrants" means the Cash Trigger Warrants, the Preferred Warrant, the Common Warrants and the Change in Control Warrants.

1.2. Interpretation.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of and to this Agreement unless otherwise specified.

(c) The plural of any defined term shall have a meaning correlative to such defined term, and words denoting any gender shall include both genders and the neuter. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any modification, amendment or re-enactment thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued under or related to such legislation. All references to accounting terms shall have the meanings determined under GAAP as in effect from time to time.

(f) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(g) No prior draft nor any course of performance or course of dealing shall be used in the interpretation or construction of this Agreement.

(h) The descriptive headings in this Agreement are intended for reference purposes only and shall not be used in the interpretation or construction of this Agreement.

(i) The parties intend that each provision of this Agreement shall be given full separate and independent effect. Although the same or similar subject matters may be addressed in different provisions of this Agreement, the parties intend that, except as expressly provided in this Agreement, each such provision be read separately, be given independent significance and not be construed as limiting any other provision in this Agreement (whether or not more general or more specific in scope, substance or context).

ARTICLE 2

REGISTRATION UNDER THE SECURITIES ACT

2.1. Demand Registration.

(a) If Parent shall receive at any time after the first anniversary of the Closing Date, a written request from the Holders of at least twenty-five percent of the A-1 Registrable Note Shares or fifty percent of the A-2 Registrable Note Shares (in either case, the "Initiating Note Holders") that Parent file a Registration Statement under the Securities Act covering the registration of a number of Registrable Note Shares; *provided* that the sale of the Registrable Note Shares requested to be registered would yield aggregate gross proceeds in excess of $10 million or, if the closing price of the Common Stock on the date of such request is less than the Signing Price, aggregate gross proceeds in excess of the product of (x) $7.5 million and (y) the quotient of the closing price of the Common Stock on date of such request divided by the Signing Price, then Parent shall:

(i) within ten days of the receipt thereof, give written notice of such request to all Holders of Registrable Note Shares;

(ii) use commercially reasonable efforts to effect, as soon as practicable, the registration under the Securities Act of all Registrable Note Shares that the

Holders thereof request to be registered, subject to the limitations of Section 2.1(b), within twenty days of the mailing of such notice by Parent in accordance with Section 4.6; and

(iii) keep such Registration Statement effective for the shorter of 180 days or until the distribution contemplated in the Registration Statement has been completed; *provided, however*, that such 180-day period shall be extended for a period of time equal to (A) the period in which any Holder refrains from selling any securities included in such Registration Statement at the request of an underwriter of Common Stock (or other securities of Parent); (B) the period in which any Holder refrains from selling any securities included in such Registration Statement at the request of Parent to permit Parent to amend such Registration Statement; (C) the duration of any Black-Out Period during which the use of a prospectus was suspended or sales of Registrable Securities were not permitted by a selling Holder and (D) the periods for which effectiveness of the Registration Statement has been suspended as permitted by this Agreement.

(b) If the Initiating Note Holders demanding the registration requested under this Article 2 intend to distribute the Registrable Note Shares covered by their request by means of an underwriting, they shall so advise Parent as a part of their request made pursuant to Section 2.1(a) and Parent shall include such information in the written notice referred to in Section 2.1(a). The underwriter will be selected by Parent, subject to the consent of a majority in interest of the Initiating Note Holders (which will not be unreasonably withheld). In such event, the right of any Holder to include its Registrable Notes Shares in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Note Shares in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Note Holders and such Holder) to the extent provided in this Article 2. All Holders proposing to distribute Registrable Note Shares through such underwriting shall (together with Parent as provided in Section 2.5(e)) enter into an underwriting agreement in the form requested by the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 2.1, if the underwriter advises the Initiating Note Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Initiating Note Holders shall so advise all Holders of Registrable Note Shares which would otherwise be underwritten pursuant to this Section 2.1(b), and the number of shares of Registrable Note Shares that may be included in the underwriting shall be allocated first among the Initiating Note Holders and second among any other Holders of Registrable Note Shares, in proportion (as nearly as practicable) to the amount of Registrable Note Shares owned by each Holder; *provided, however*, that if the number of shares of Registrable Note Shares to be included in such underwriting shall be reduced, no Registrable Note Shares of the Initiating Note Holders shall be excluded until all other Registrable Note Shares have been excluded.

(c) Notwithstanding the foregoing, Parent shall have the right to defer the filing of the Registration Statement under this Section 2.1, or suspend the use of the related prospectus, during a Black-Out Period occurring after receipt of the request of the Initiating Note Holders; *provided* that Parent may not utilize such deferral or suspension right more than twice in any twelve-month period.

(d) In addition, Parent shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2.1:

(i) after Parent has effected three registrations (two at the request of Holders of A-1 Registrable Note Shares and one at the request of Holders of A-2 Registrable Note Shares) pursuant to this Section 2.1 and such registrations have been declared effective; or

(ii) during the period starting with the date sixty days prior to Parent's good faith estimate of the date of filing of, and ending on a date 180 days after the effective date of, a registration subject to Section 2.2.

(e) Expenses of Demand Registrations. All expenses (other than underwriting discounts and commissions) incurred in connection with registration pursuant to Section 2.1, including all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for Parent and the reasonable fees and disbursements of one counsel for the selling Holders (not to exceed $50,000 per registration) (selected by a majority of the sellers of the Registrable Note Shares) shall be borne by Parent regardless of whether such Registration Statement is declared effective by the SEC.

(f) Additional Form S-3 (or Form S-1) Registration. After the exercise of three demand registrations pursuant to Section 2.1(a), the Holders of Registrable Note Shares shall be entitled to one additional registration of Registrable Note Shares by Parent on Form S-3 or Form S-1 if Form S-3 is not then available to Parent. The additional registration of Registrable Note Shares under this Section 2.1(f) shall be made pursuant to the procedures set forth in Section 2.3 as if the Holders of Registrable Note Shares were Holders of Registrable Warrant Shares.

(g) Allocations of Demand Registrations. The holders of Series A-1 Notes shall be entitled to initiate two of the registrations under this Section 2.1 and the holders of the Series A-2 Notes shall be entitled to initiate one of the registrations under this Section 2.1.

2.2. Parent Registration.

(a) Procedures for Parent Registration. If (but without any obligation to do so) Parent proposes to register (including for this purpose a registration effected by Parent for stockholders other than the Holders) any of its common stock under the Securities Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities to participants in a Parent stock plan, a registration with respect to any transaction within the scope of Rule 145 or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities other than the Notes which are also being registered), Parent shall give each Holder of Registrable Securities thirty days prior written notice of such registration. Upon the written request of each Holder given within fifteen days after receipt of such notice by Parent in accordance with Section 4.6, Parent shall, subject to the provisions of Section 2.2(c), use commercially reasonable efforts to cause all of the Registrable Securities that each such Holder has requested to be registered to be so registered under the Securities Act.

(b) Right to Terminate Registration. Parent shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

(c) Expenses of Parent Registration. All expenses (other than underwriting discounts and commissions related to the Registrable Securities) incurred, in connection with any registration pursuant to this Section 2.2, including all registration, filing, and qualification fees, printers' and accounting fees, fees and disbursements of counsel for Parent and the fees and disbursements of one counsel for the selling Holders (not to exceed $50,000 per registration) selected by the Holders of a majority of the Registrable Securities shall be borne by Parent regardless of whether such Registration Statement is declared effective by the SEC.

(d) In connection with any offering involving an underwriting of shares of Parent's capital stock, Parent shall not be required under this Section 2.2 to include any of the Registrable Securities in such underwriting unless the Holders thereof accept the terms of the underwriting as agreed upon between Parent and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not, jeopardize the success of the offering by Parent. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by Parent that the underwriters determine in their sole discretion is compatible with the success of the offering, then Parent shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders) but in no event shall the amount of securities of the selling Holders of Registrable Securities included in the offering be reduced below thirty percent of the total amount of securities included in such offering. For purposes of the preceding parenthetical concerning apportionment, for any selling stockholder which is a Holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling stockholder," and any pro-rata reduction with respect to such "selling stockholder" shall be based upon the aggregate amount of Registrable Securities owned by all entities and individuals included in such "selling stockholder," as defined in this sentence.

2.3. Form S-3 Registration.

(a) Procedures for Form S-3 Registration. Beginning 180 days following the Closing, if at any time or from time to time Parent shall receive a written request or requests from any Holder or Holders of Registrable Warrant Shares that Parent effect a registration on Form S-3, or, if Parent is not then eligible for a registration on Form S-3, on Form S-1 related to a Rule 415 offering, with respect to all or a part of the Registrable Warrant Shares owned by such Holder or Holders, Parent will:

(i) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders of Registrable Warrant Shares;

(ii) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Warrant Shares as are specified in such request, together with all or such portion of the Registrable Warrant Shares of any other Holder or Holders joining in such request as are specified in a written request given within fifteen days after receipt of such written notice from Parent; *provided* that Parent shall not be obligated to effect any such registration, qualification or compliance, pursuant to this Section 2.3: (A) if the Holders, together with the holders of any other securities of Parent entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $250,000 (an "Insufficient Amount"); or (B) during a Black-Out Period. Parent shall have the right, in the case of an Insufficient Amount or Black-Out Period, to (x) defer the filing of the Form S-3 (or Form S-1) Registration Statement for a period of not more than sixty days, in the case of an Insufficient Amount, or the duration of the Black-Out Period, whichever is shorter, after receipt of the request of the Holder or Holders under this Section 2.3 or (y) suspend the use of the related prospectus for the Black-Out Period; *provided further* that Parent shall not utilize its deferral or suspension rights based on a Black-Out Period more than twice in any twelve-month period; or (C) in any particular jurisdiction in which Parent would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance; and

(iii) keep such Registration Statement effective for the shorter of 12 months or until the distribution contemplated in the Registration Statement has been completed; *provided, however*, that such 12-month period shall be extended for a period of time equal to (A) the period in which any Holder refrains from selling any securities included in such Registration Statement at the request of an underwriter of Common Stock (or other securities of Parent); (B) the period in which any Holder refrains from selling any securities included in such Registration Statement at the request of Parent to permit Parent to amend such Registration Statement; (C) the duration of a Black-Out Period during which the use of a prospectus was suspended and (D) the periods for which effectiveness of the Registration Statement has been suspended as permitted by this Agreement.

(b) Shelf Registration. If a Warrant Holder or Warrant Holders requests that a Parent registration under Section 2.3(a) be made for an offering on a continuous basis pursuant to Rule 415 under the Securities Act on Form S-3 (or Form S-1), Parent shall (i) register the Registrable Warrant Shares of such Warrant Holder or Warrant Holders, as the case may be, on a continuous basis and (ii) use commercially reasonable efforts to keep such Registration Statement effective for the shorter of 12 months or until all Registrable Warrant Shares covered by such Registration Statement have been sold.

(c) Expenses of Form S-3 Registration. All expenses (other than underwriters' discounts or commissions associated with Registrable Securities) incurred in connection with a registration requested pursuant to this Section 2.3, including all registration, filing and qualification fees, printer's and accounting fees, fees and disbursements of counsel for

Parent and the reasonable fees and disbursements of one counsel for the selling Holder or Holders (not to exceed $50,000 per registration) and counsel for Parent, shall be borne by Parent regardless of whether such Registration Statement is declared effective by the SEC. Registrations effected pursuant to this Section 2.3 shall not be counted as demands for registration pursuant to Section 2.1.

2.4. Mandatory Registration Prior to Mandatory Conversion. If Parent desires to exercise its option under Section 9.5 of the Purchase Agreement to convert any portion of the Notes, Parent shall, as a condition precedent to effecting such conversion, (i) file a resale Registration Statement of Form S-3, or Form S-1 if From S-3 is not otherwise then available to Parent and (ii) cause such Registration Statement to be declared effective prior to the exercise of such option. Each Holder shall cooperate in good faith with Parent in its efforts to cause such Registration Statement to become effective, including providing Parent with information pursuant to Section 2.6(a). Parent shall maintain the effectiveness of such Registration Statement for the shorter of twelve months or until all Registrable Note Shares issued upon conversion, are sold.

(b) All expenses (other than underwriting discounts and commissions) incurred in connection with registration pursuant to Section 2.4, including all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for Parent and the reasonable fees and disbursements of one counsel for the selling Holders (not to exceed $50,000 per registration) selected by the Holders of a majority of the Registrable Note Shares shall be borne by Parent regardless of whether such Registration Statement is declared effective by the SEC.

2.5. Obligations of Parent. Whenever required under this Article 2 to effect the registration of any Registrable Securities, Parent shall, as expeditiously as reasonably possible:

(a) Registration Statement. Prepare and file with the SEC a Registration Statement with respect to such Registrable Securities and use its best efforts to cause such Registration Statement to become effective.

(b) Amendments. Prepare and file with the SEC such amendments and supplements to such Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement.

(c) Prospectuses. Furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Blue Sky. Use its best efforts to register and qualify the securities covered by such Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that Parent shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless Parent is already subject to service in such jurisdiction and except as may be required by the Securities Act.

(e) Underwriting Agreement. If an offering is an underwritten public offering, enter into and perform its obligations under an underwriting agreement requested by the managing underwriter of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notice of Misstatement or Omission. Notify each Holder covered by such Registration Statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Listing or Quotation. Cause all such Registrable Securities registered pursuant to this Agreement to be listed on each securities exchange on which similar securities issued by Parent are then listed.

(h) Transfer Agent: CUSIP. Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(i) Legal Opinion. Use commercially reasonable efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Article 2, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Article 2, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the Registration Statement with respect to such securities becomes effective, (i) an opinion, dated such date, of the counsel for Parent, in form and substance as is customarily requested by the underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent certified public accountants of Parent and any company acquired by Parent, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities.

2.6. Obligations of Holders.

(a) It shall be a condition precedent to the obligations of Parent to take any action pursuant to this Article 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to Parent such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be required to effect the registration of such Holder's Registrable Securities.

(b) Parent shall have no obligation with respect to any registration requested pursuant to Section 2.1 or 2.3 if the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger Parent's obligation to initiate such registration as specified in Section 2.1(a) or 2.3(a), whichever is applicable.

2.7. Assignment of Registration Rights. The rights to cause Parent to register Registrable Securities pursuant to this Article 2 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities *provided*: (a) Parent is furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Securities Act.

2.8. Limitations on Subsequent Registration Rights. Unless unanimously approved by the Parent board of directors, from and after the date of this Agreement, Parent shall not, without the prior written consent of the Holders of a majority of the then-outstanding Registrable Securities, enter into any new agreement with any holder or prospective holder of any securities of Parent which would allow such holder or prospective holder (a) to include such securities in any registration filed under Section 2.1, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such holder's prospective holder's securities will not reduce the amount of the Registrable Securities of the Holders that is included or (b) to make a demand registration which could result in such Registration Statement being declared effective prior to the date of the first demand registration pursuant to Section 2.1(a) or within 120 days of the effective date of any registration effected pursuant to Section 2.1.

ARTICLE 3

INDEMNIFICATION; CONTRIBUTION

3.1. Indemnification by Parent. Parent agrees to indemnify and hold harmless each Holder of Registrable Securities to be included in any Registration Statement, the officers and directors of each such Person, and each Person, if any, who controls any such Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a "Participant"), from and against any and all losses, claims, damages and liabilities (including the reasonable legal fees and other reasonable expenses actually incurred in connection with any suit, action, proceeding, investigation or any claim asserted or threatened) caused by, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus (as amended or supplemented if Parent shall have furnished any amendments or supplements thereto) or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except insofar as such losses, claims, damages or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Participant furnished to Parent in writing by

or on behalf of such Participant expressly for use therein; *provided*, *however*, that Parent shall not be liable if such untrue statement or omission or alleged untrue statement or omission was contained or made in any preliminary prospectus and corrected in the Prospectus or any amendment or supplement thereto and the Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission of a material fact that was the subject matter of the related proceeding and any such loss, liability, claim, damage or expense suffered or incurred by the Participants resulted from any action, claim or suit by any Person who purchased Registrable Securities that are the subject thereof from such Participant and it is established in the related proceeding that such Participant had been provided with such Prospectus and failed to deliver or provide a copy of the Prospectus (as amended or supplemented) to such Person with or prior to the confirmation of the sale of such Registrable Securities sold to such Person unless such failure to deliver or provide a copy of the Prospectus (as amended or supplemented) was a result of noncompliance by Parent with this Agreement.

3.2. Several Indemnification by Participants. Each Participant agrees, severally and not jointly, to indemnify and hold harmless Parent, each other Participant, its directors and officers and each Person who controls Parent and each other Participant within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including the reasonable legal fees and other reasonable expenses actually incurred in connection with any suit, action, proceeding, investigation or any claim asserted or threatened) caused by, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus (as amended or supplemented if Parent shall have furnished any amendments or supplements thereto) or caused by, arising out of or based upon any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, only insofar as such losses, claims, damages or liabilities are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to any Participant furnished to Parent in writing by or on behalf of such Participant expressly for use therein; *provided*, *however*, that a Participant shall not be liable if such untrue statement or omission or alleged untrue statement or omission was contained or made in any preliminary prospectus and corrected in the Prospectus or any amendment or supplement thereto and the Prospectus does not contain any other untrue statement or omission or alleged untrue statement or omission of a material fact that was the subject matter of the related proceeding and any such loss, liability, claim, damage or expense suffered or incurred by Parent or any other Participant resulted from any action, claim or suit by any Person who purchased Registrable Securities that are the subject thereof from such other Participant and it is established in the related proceeding that Parent or such other Participant, as applicable, had been provided with such Prospectus and failed to deliver or provide a copy of the Prospectus (as amended or supplemented) to such Person with or prior to the confirmation of the sale of such Registrable Securities sold to such Person unless such failure to deliver or provide a copy of the Prospectus (as amended or supplemented) was a result of noncompliance by such Participant with this Agreement. No Participant shall be liable under this Article 3 for any amounts in excess of such Participant's proceeds from the sale of such Participant's Registrable Securities.

3.3. Indemnification Procedures.

(a) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such Person (the "Indemnified Person") shall promptly notify the Person against whom such indemnity may be sought (the "Indemnifying Person") in writing, and the Indemnifying Person, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others the Indemnifying Person may reasonably designate in such proceeding and shall pay the reasonable fees and expenses actually incurred by such counsel related to such proceeding; *provided, however*, that the failure to so notify the Indemnifying Person shall not relieve it of any obligation or liability which it may have hereunder or otherwise, except to the extent of any prejudice caused by such delay. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel if it would be a conflict of interest for the Indemnified Person and the Indemnifying Person to be represented by the same counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (a) the Indemnifying Person and the Indemnified Person shall have mutually agreed in writing to the contrary, (b) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person or (c) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and there are one or more defenses available to the Indemnified Person that are not available to the Indemnifying Person. It is understood that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such reasonable fees and expenses shall be reimbursed as they are incurred. Any such separate firm for the Participants and such control Persons of Participants shall be designated in writing by Participants who sold a majority in interest of Registrable Securities sold by all such Participants and any such separate firm for Parent, its directors, officers and control Persons of Parent shall be designated in writing by Parent. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with such consent or if there is a final non-appealable judgment for the plaintiff, the Indemnifying Person agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement (y) includes an unconditional release of such Indemnified Person, in form and substance satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (z) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of an Indemnified Person.

3.4. Contribution.

(a) If the indemnification provided for in the preceding sections of this Article 3 is unavailable to, or insufficient to hold harmless, an Indemnified Person in respect of

any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraphs, in lieu of indemnifying such Indemnified Person thereunder and in order to provide for just and equitable contribution, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnifying Person or Persons on the one hand and the Indemnified Person or Persons on the other in connection with the statements or omissions (or alleged statements or omissions) that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Person on the one hand or by the Indemnified Person, as the case may be, on the other, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission and any other equitable considerations appropriate under the circumstances.

(b) The parties agree that it would not be just and equitable if contribution pursuant to this Article 3 were determined by pro rata allocation (even if the Participants were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses actually incurred by such Indemnified Person in connection with investigating or defending any such suit, action, proceeding or investigation or claim. Notwithstanding the provisions of this Article 3, in no event shall a Participant be required to contribute any amount in excess of the amount by which proceeds received by such Participant from sales of Registrable Securities exceeds the amount of any damages that such Participant has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11 of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

3.5. Additional Remedies. The indemnity and contribution agreements contained in this Article 3 will be in addition to any liability which the Indemnifying Persons may otherwise have to the Indemnified Persons referred to above.

ARTICLE 4

MISCELLANEOUS

4.1. Rule 144. Parent covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder in a timely manner and, if at any time it is not required to file such reports, it will, upon the request of any Holder of Registrable Securities, make available other information so long as necessary to permit sales pursuant to Rule 144 and Rule 144A.

4.2. Remedies. If Parent breaches of any of its obligations under this Agreement, each Holder of Registrable Securities, in addition to being entitled to exercise all rights provided herein, or, in the case of an Initial Purchaser, in the Purchase Agreement, or granted by law, including recovery of damages will be entitled to specific performance of its rights under this Agreement. Parent agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

4.3. No Inconsistent Agreements. Parent has not entered, as of the date hereof, into any agreement with respect to any of its securities that is inconsistent with, diminishes or otherwise limits, the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

4.4. Adjustments Affecting Registrable Securities. Except for the Governance Agreement, Parent shall not, directly or indirectly, take any action with respect to the Registrable Securities as a class distinct from other holders of Parent capital stock that would adversely affect the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement.

4.5. Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, otherwise than with the prior written consent of Holders of not less than a majority in interest of each of the A-1 Registrable Note Shares, the A-2 Registrable Note Shares and the Registrable Warrant Shares (voting together as a single group).

4.6. Notices.

(a) All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, internationally recognized overnight air courier or telecopier with receipt (confirmed by telephone call received by sender):

(i) if to a Holder, at the most current address of such Holder set forth on the records of the registrar under the Purchase Agreement;

(ii) with a copy (which shall not constitute notice) to:

Latham & Watkins
135 Commonwealth Drive
Menlo Park, CA 94025-1105
Facsimile: (650) 463-2600
Telephone: (650) 328-4600
Attention: Robert A. Koenig

and

Brobeck Phleger & Harrison LLP
550 South Hope Street

Los Angeles, CA 90071
Facsimile: (213) 745-3345
Telephone: (213) 489-4060
Attention: Richard S. Chernicoff

(iii) if to Parent, at the address as follows:

Equinix, Inc.
2450 Bayshore Parkway
Mountain View, CA 94043
Facsimile: (650) 316-6900
Telephone: (650) 316-6000
Attention: Chief Financial Officer

with a copy (which shall not constitute notice) to:

Gunderson, Dettmer, Stough, Villeneuve,
Franklin & Hachigian, LLP
155 Constitution Drive
Menlo Park, CA 94025
Facsimile: (650) 321-2800
Telephone:
Attention: Christopher D. Dillon and Scott C. Dettmer

(iv) if to the Initial Purchasers, as provided in the Purchase Agreement.

(b) All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; two Business Days after being timely delivered to an internationally recognized overnight delivery service (such as Federal Express); and when delivery is confirmed by a telephone call received by sender confirming receipt, if telecopied.

4.7. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto and the Holders.

4.8. Counterparts. This Agreement may be executed in one or more counterparts (whether delivered by facsimile or otherwise), each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

4.9. Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

4.10. Governing Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York).

4.11. Arbitration.

(a) All disputes, controversies or claims (whether in contract, tort or otherwise) arising out of, relating to or otherwise by virtue of, this Agreement, breach of this Agreement or the transactions contemplated by this Agreement shall be finally settled under the Rules of Arbitration (except as set forth below) of the London Court of International Arbitration (as amended from time to time, the "LCIA Rules"). EACH PARTY ACKNOWLEDGES THAT IT IS WAIVING ANY RIGHTS IT MAY HAVE TO TRIAL BY JURY.

(b) The arbitration shall be seated in London, England, in the English language and shall be the exclusive forum for resolving such disputes, controversies or claims. The arbitrator shall have the power to order hearings and meetings to be held in such place or places as he or she deems in the interests of reducing the total cost to the parties of the arbitration.

(c) The arbitration shall be held in before a single arbitrator. Each party to the arbitration shall submit a list of three proposed arbitrators, who each meet the criteria set forth in Section 4.11(d) within ten Business Days of service of the request for arbitration on the last respondent. The LCIA Court (as referred to in the LCIA Rules) shall select from among such nominations, with any person nominated by more than one party to the arbitration being per se the nominee of each party.

(d) The arbitrator shall have practiced the field of law that is principally the subject of such dispute, controversy or claim in the State of New York for at least ten years. The arbitrator may be of the same nationality as any party. The arbitrator shall have the power to order equitable remedies and not just the payment of monies. Notwithstanding the LCIA Rules, no party shall have the right to seek a court order of interim or conservatory measures, other than a court order confirming and enforcing an arbitral award of interim or conservatory measures. The arbitrator may hear and rule on dispositive motions as part of the arbitration proceeding (e.g. motions for judgment on the pleadings, summary judgment and partial summary judgment).

(e) All timetables and deadlines (and criteria for granting extensions and waivers thereof) for the conduct of the arbitration shall be set in accordance with the Federal Rules of Civil Procedures (and any applicable local rules) as then interpreted and applicable in the Court of Appeals for the Second Circuit and the United States District Court of and for the Southern District of New York. The Arbitrator shall not have the power to abridge such time requirements.

(f) Discovery shall be permitted to the extent, and under the conditions, then in effect under the Federal Rules of Civil Procedure of the United States as then interpreted and construed by the Court of Appeals for the Second Circuit and the United States District Court of and for the Southern District of New York. The arbitrator may appoint an expert only with the consent of all of the parties to the arbitration. Testimony of witnesses may be challenged to the extent, and under the conditions, then in effect under the Federal Rules of Evidence of the United States as interpreted and construed by the Court of Appeals for the Second Circuit and the United States District Court of and for the Southern District of New York.

(g) All deposits required under the LCIA Rules shall be paid equally by all parties to the arbitration. Each party shall to the arbitration shall pay its own costs and expenses (including, but not limited to, attorney's fees) in connection with the arbitration.

(h) The award rendered by the arbitrator shall be executory, final and binding on the parties. The award rendered by the arbitrator may be entered into any court having jurisdiction (including, the courts of the State of New York), or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be. Such court proceeding shall disclose only the minimum amount of information concerning the arbitration as is required to obtain such acceptance or order.

(i) Except as required by law, no party to this Agreement nor the arbitrator may disclose the existence, content or results of an arbitration brought pursuant to this Agreement.

4.12. Severability. Any term or provision of this Agreement that is held to be invalid, void or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement. If any term or provision of this Agreement is determined by the arbitrator to be invalid, void or unenforceable, the parties agree that the arbitrator shall have the power to and shall, subject to the arbitrator's discretion, reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

4.13. Third Party Beneficiaries. All Persons who become Holders of Registrable Securities are intended third party beneficiaries of this Agreement and this Agreement may be enforced by such Persons.

4.14. Entire Agreement. This Agreement, together with the Purchase Agreement, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Initial Purchasers on the one hand and Parent on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

EQUINIX, INC.

By: /s/ PETER F. VAN CAMP

Name: Peter F. Van Camp
Title: Chief Executive Officer

INITIAL PURCHASERS:

i-STT INVESTMENTS PTE LTD

By: /s/ JEAN MANDEVILLE

Name: Jean Mandeville
Title: Chief Financial Officer

Exhibit 10.76

SECURITIES PURCHASE AGREEMENT

by and among

EQUINIX, INC.,

THE GUARANTORS PARTY HERETO FROM TIME TO TIME

and

THE PURCHASERS NAMED HEREIN

Dated as of

October 2, 2002

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT, dated as of October 2, 2002 (this "Agreement"), by and among Equinix, Inc., a Delaware corporation (the "Parent"), the subsidiaries of Parent that from time to time become Guarantors of Parent's obligations under this Agreement, and the Purchasers named in Schedule 1 and Schedule 2 to this Agreement (severally and not jointly, the "Purchasers").

WHEREAS, Parent desires to issue and sell (a) to the A-1 Purchaser up to $40 million aggregate principal amount of Parent's 14% Series A-1 Convertible Secured Notes due 2007, warrants (the "Preferred Warrants") to purchase shares of preferred stock of Parent, and warrants (the "Change in Control Warrants") to purchase shares of Parent's common stock, par value $0.001 per share (the "Common Stock"), and (b) to the A-2 Purchasers, if any, up to $10 million aggregate principal amount of Parent's 10% Series A-2 Convertible Secured Notes due 2007 and warrants (the "Common Warrants") to purchase shares of Common Stock and Change in Control Warrants, in each case, on the terms and subject to the conditions in this Agreement;

WHEREAS, the A-1 Purchaser desires to purchase the A-1 Notes, the Preferred Warrants and Change in Control Warrants and the A-2 Purchasers, if any, desire to severally, and not jointly, purchase A-2 Notes, the Common Warrants and Change in Control Warrants, in each case, on the terms and subject to the conditions in this Agreement;

WHEREAS, the Guarantors shall receive a direct and substantial benefit, which benefit is hereby acknowledged, from the use of the proceeds of the sale of the Notes and Warrants to, among other things, reduce the outstanding obligations under the Amended and Restated Credit and Guaranty Agreement, dated as of September 30, 2001 (as amended, modified, renewed, refinanced or extended from time to time, the "Credit Agreement"), by and among Equinix Operating Co., Inc., a Delaware corporation, Parent, Equinix Europe, Inc., a Delaware corporation, Equinix-DC, Inc., a Delaware corporation, the Lenders who are a party thereto from time to time, Goldman Sachs Credit Partners L.P., as Joint Lead Arranger, Joint Book Runner and Syndication Agent, Salomon Smith Barney Inc., Citicorp USA, Inc., as Administrative Agent, and CIT Lending Services Corporation, as Collateral Agent; and

WHEREAS, Parent and the Purchasers intend that (a) the Notes be secured by second-priority security interests in the collateral securing Parent's obligations under the Credit Agreement and (b) until the later of the fourth anniversary of the Closing Date (as defined) or the date the obligations under the Credit Agreement are repaid in full, the A-1 Notes be secured by a first-priority security interest in the A-1 Assets.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants in this Agreement, the Parties, intending to be legally bound, agree as follows:

1. Definitions; Construction.

1.1 Definitions. Unless otherwise defined in this Agreement, capitalized terms used in this Agreement or the Notes without definition have the respective meanings given to them in the Credit Agreement. For the purpose of this Agreement, the following terms shall have the following specified meanings:

"A-1 Assets" means the assets in which a security interest is granted by Parent pursuant to the A-1 Security Documents.

"A-1 Notes" means Parent's 14% Series A-1 Convertible Secured Notes due 2007 and any corresponding PIK Notes.

"A-1 Principal Amount means $40,000,000 less the A-2 Principal Amount.

"A-1 Purchaser" means the Purchaser of the A-1 Notes set forth on Schedule 1.

"A-1 Security Documents" means the Debenture, made on the Closing Date, between i–STT Pte Ltd. and STT Communications, the Share Charge, made on Closing Date, between Interco Singapore and STT Communications, the Assignment of Tenancy Agreements, made on the Closing Date, between i–STT Pte Ltd. and STT Communications and the Option Agreement, made on the Closing Date, between Interco Singapore and STT Communications, each substantially in the form as Exhibit 7.1(j)(iii) and substantially equivalent documents creating a security interest in the shares and assets (including leasehold or other real property interests) of the subsidiaries of i-STT Pte Ltd. located in Thailand and Shanghai, China and the subsidiaries of Pihana located in Singapore.

"A-2 Notes" means Parent's 10% Series A-2 Convertible Secured Notes due 2007 and any corresponding PIK Notes.

"A-2 Principal Amount" means the aggregate principal amount of the A-2 Notes to be issued under this Agreement, if any, as set forth on Schedule 2, which will not exceed $10 million.

"A-2 Purchasers" means Purchasers of the A-2 Notes including LoneTree Capital Management, LLC or its respective affiliates to the extent they become Purchasers pursuant to Section 2.2(a) and such other Purchasers, if any, as are reasonably acceptable to each of STT Communications and Parent.

"Administrative Agent" means the Person named as the Administrative Agent in the Credit Agreement or any successor thereto.

"Asian Subsidiaries" means i-STT Pte Ltd., i-STT Nation Ltd., a company organized under the laws of the Republic of Thailand, and i-STT (Shanghai) Co., Ltd., a company organized under the laws of the People's Republic of China.

"Business Day" means a day that is not a Saturday, a Sunday or a day on which banking institutions are required to be closed in the City of New York, State of New York.

"Cash Trigger Warrants" means warrants to purchase shares of Common Stock for an aggregate cash amount of up to $30,000,000, exercisable upon the occurrence of certain events of default under the Credit Agreement, and denominated as the Series A Cash Trigger

Warrants or Series B Cash Trigger Warrants depending on their exercise price, each to be substantially in the form of Exhibit 2.4.

"Certificate of Designation" means the certificate of designation of the Series A Preferred Stock and the Series A-1 Preferred Stock attached to the Combination Agreement as Exhibit B, as filed with the Secretary of State of the State of Delaware on the Closing Date.

"Change in Control" means (a) the direct or indirect sale or transfer of all or substantially all of Parent's assets; (b) any business combination which results in the holders of Parent'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 of Parent, as a result of which fewer than 50% of the incumbent directors are directors who either (i) had been members of Parent's 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 of Parent by a majority of the aggregate of the Original Directors and other directors nominated or appointed in a manner consistent with this clause (ii). Notwithstanding the foregoing, the acquisition by STT Communications or its affiliates and associates of beneficial ownership up to 66 $^{2}/_{3}$% of the voting securities of Parent shall not constitute a Change in Control.

"Change in Control Payment Date is defined in Section 9.7(a).

"Change in Control Price" means, with respect to each Note, 100% of the principal amount of such Note.

"Change in Control Warrants" is defined in the recitals to this Agreement.

"Change in Control Warrant Shares" is defined in Section 9.7(a).

"Closing" is defined in Section 2.2(b).

"Closing Date" means the date and time at which the Closing actually occurs.

"Collateral" means, collectively, all of the real, personal and mixed property (including capital stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations and the Financing Document Obligations.

"Collateral Agent" means the Person named as Collateral Agent in the Credit Agreement and any successor thereto.

"Collateral Documents" has the meaning set forth in the Credit Agreement but also includes the Intercreditor Agreement and the A-1 Security Documents.

"Combination" means the transactions (other than the transactions contemplated by this Agreement) contemplated by the Combination Agreement, including (a) the acquisition of all of the outstanding capital stock of i-STT and (b) the merger of a wholly-owned Subsidiary of Parent with and into Pihana.

"Combination Agreement" means the Combination Agreement, dated the date of this Agreement, among Parent, Eagle Panther Acquisition Corp., a Delaware corporation and wholly-owned indirect subsidiary of Parent, Eagle Jaguar Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Parent, i-STT, STT Communications, Pihana and Jane Dietze as the representative of the stockholders of Pihana.

"Combination Documents" means the Combination Agreement and all other documents to be delivered by the parties to such agreement in connection with the transactions (other than the transactions contemplated by this Agreement) contemplated thereby.

"Common Stock" is defined in the recitals to this Agreement.

"Common Warrant Shares" means the number of shares of Common Stock issuable, as of any date of determination, upon exercise of a Common Warrant

"Common Warrants" is defined in the recitals to this Agreement.

"Conversion Date" means immediately prior to the close of business on the day that a Holder delivers Notes and an instrument instructing Parent to convert such Notes to shares of Series A Preferred Stock or Common Stock, as the case may be, pursuant to this Agreement; *provided* that if such day is not a Business Day, then the Conversion Date shall be deemed to be immediately prior to the close of business on the next preceding Business Day.

"Conversion Preferred Stock" shall mean shares of Series A Preferred Stock; *provided* that "Conversion Preferred Stock" shall mean shares of Series A-1 Preferred Stock if at the time of conversion or exercise of any Note or Warrant by an A-1 Purchaser, the receipt of Series A Preferred Stock by such purchaser would cause (a) the voting power of the issued and outstanding shares held by such purchaser or its affiliates to exceed 40% of the then outstanding voting power of all securities of Parent then entitled to vote on the election of members of Parent's board of directors or (b) (x) the value of all outstanding voting securities held by such purchaser following such conversion or exercise would exceed $50,000,000 (as determined by reference to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act")), or any other applicable threshold that would require compliance with the HSR Act and (y) such purchaser has not complied with the HSR Act prior to such conversion or exercise; *provided, further*, that clause (a) shall terminate upon the earlier of (A) the second anniversary of the Closing Date or (B) a Voting Stock Trigger Event (as defined in the Certificate of Designation).

"Conversion Price" means $0.3366, as adjusted pursuant to Section 9.6.

"Credit Agreement" is defined in the recitals to this Agreement.

"Current Market Value" per share of Common Stock or any other security at any date means (a) if the security is not registered under the Exchange Act, (i) the value of the security, determined in good faith by the board of directors of Parent and certified in a board resolution, based on the most recently completed arm's-length transaction between Parent and a Person other than an affiliate of Parent and the closing of which occurs on such date or shall have occurred within the six-month period preceding such date, or (ii) if no transaction shall have occurred on such date or within such six-month period, the fair market value of the security as

determined by an Independent Financial Expert (*provided* that, in the case of the calculation of Current Market Value for determining the cash value of fractional shares, any such determination made by the board of directors of Parent within six months that is, in the good faith judgment of the board of directors of Parent, a reasonable determination of value, may be utilized) or (b) (i) if the security is registered under the Exchange Act, the average of the daily closing sales prices of the securities for the twenty consecutive Trading Days ending on and including such date, or (ii) if the securities have been registered under the Exchange Act for less than twenty consecutive Trading Days immediately preceding such date, then the average of the daily closing sales prices for all of the Trading Days before such date for which closing sales prices are available. The closing sales price for each such trading day shall be: (a) in the case of a security listed or admitted to trading on any United States national securities exchange or quotation system, the closing sales price, regular way, on such day, or if no sale takes place on such day, the average of the closing bid and asked prices on such day, (b) in the case of a security not then listed or admitted to trading on any national securities exchange or quotation system, the last reported sale price on such day, or if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reputable quotation source designated by Parent, (c) in the case of a security not then listed or admitted to trading on any national securities exchange or quotation system and as to which no such reported sale price or bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as reported by a reputable quotation service, or a newspaper of general circulation in The City, County and State of New York, customarily published on each Business Day, designated by Parent, or, if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than thirty days prior to the date in question) for which prices have been so reported and (d) if there are not bid and asked prices reported during the thirty trading days prior to the date in question, the Current Market Value shall be determined as if the shares of Common Stock (or other securities) were not registered under the Exchange Act.

"Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Determination Date" means the tenth Business Day prior to the anticipated date on which the Closing is expected to occur.

"Dollars," "dollars" or the symbol, "$," means United States dollars.

"Event of Default" is defined in Section 8(a).

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Conversion Adjustment" is defined in Section 9.6.

"Existing Guarantor" means any Person that is a Guarantor as of the date of this Agreement or the Closing Date, as applicable. For the avoidance of doubt, each Person that is acquired pursuant to the Combination Documents shall be deemed to be an Existing Guarantor as of the Closing Date.

"Final Schedule" is defined in Section 2.3(c).

"Financing Documents" means this Agreement, each Note, the A-1 Security Documents, the Intercreditor Agreement, each Guaranty, each Warrant and the Registration Rights Agreement.

"Financing Document Obligations" means all obligations of every nature of Parent and each Guarantor from time to time owed to the Purchasers or the Holders or any of them or their respective affiliates, under any Financing Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Parent or such Guarantor, would have accrued on any Financing Document Obligations, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise.

"First Anniversary" means the first anniversary of the Closing Date.

"Forced Conversion Date" means immediately prior to the close of business on a Trading Day that is two Trading Days after Parent delivers notice to the Holders that, as of the close of trading on the day preceding such notice, a Trading Period had occurred.

"Fundamental Transaction" a single transaction or a series of related transactions through which Parent merges, consolidates or amalgamates with or into any other Person or sells, assigns, transfers, licenses, leases, conveys or otherwise disposes of all or substantially all of its assets to another Person or group of affiliated Persons or is a party to a merger or binding share exchange which reclassifies or changes its outstanding Common Stock, other than the transactions contemplated by the Transaction Documents.

"GAAP" means accounting principals generally accepted in the United States, as in effect from time to time.

"Governmental Entity" means any domestic or foreign governmental, regulatory or administrative authority, agency or commission, any court, tribunal or arbitral body, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental authority.

"Guaranty" means a Guaranty of the Notes substantially in the form of Exhibit 2.1(c), executed by each Guarantor.

"Guarantor" means each Existing Guarantor and, from and after the date a Person becomes a Restricted Subsidiary, such new Restricted Subsidiary.

"Holder" means each Person in whose name Notes are registered.

"i-STT Pte. Ltd." means i-STT Pte. Ltd., a company organized under the laws of the Republic of Singapore.

"i-STT Disclosure Letter" means the disclosure letter of Jaguar referred to in the Combination Agreement.

"Independent Financial Expert" means an investment banking firm of national or regional standing in the United States (a) which does not, and whose directors, officers and employees or affiliates do not have a direct or indirect material financial interest for its proprietary account in Parent or any of its affiliates and (b) which, in the judgment of the board of directors of Parent, is otherwise independent with respect to Parent and its affiliates and qualified to perform the task for which it is to be engaged.

"Intercreditor Agreement" means the Intercreditor Agreement, to be dated as of the Closing Date, by and among the Collateral Agent and the Holders, in a form reasonably acceptable to the Purchasers and their special counsel.

"Internal Revenue Code" means the Internal Revenue Code of 1986.

"Joint Lead Arranger" means the Person named as Joint Lead Arranger under the Credit Agreement or any successor thereto.

"Law" means any foreign or domestic (Federal, state or local) law, statute, ordinance, franchise, permit, concession, license, writ, rule, regulation, order, injunction, judgment or decree.

"Lender" is defined in the Credit Agreement.

"Material Adverse Effect" means (a) any event, change, circumstance or effect that is, or would be reasonably likely to result, either individually or in the aggregate, in a materially adverse effect on the business, operations, condition (financial or otherwise), assets (tangible or intangible), liabilities or results of operations of Parent and its Subsidiaries, taken as a whole, except for any such events, changes, circumstances or effects primarily resulting from or arising in connection with (i) any changes in general economic or business conditions of the markets in which Parent and its Subsidiaries operate that do not disproportionately impact Parent and its Subsidiaries, (ii) any changes or events affecting the industry in which Parent operates that do not disproportionately impact Parent or its Subsidiaries or (iii) the transactions contemplated by this Agreement, or (b) a material adverse change in, or material adverse effect on (i) the ability of Parent or any Guarantor to fully and timely perform the Financing Document Obligations; (ii) the legality, validity, binding effect or enforceability against Parent or any Guarantor of a Credit Document or Financing Document to which it is a party; (iii) the rights, remedies and benefits available to, or conferred upon, any Holder or Purchaser under any Financing Document; or (iv) the status, effectiveness or priority of the Liens held by the Collateral Agent for the benefit of the Secured Parties and the Purchasers.

"Maturity Date" means November 1, 2007.

"Note Shares" means the shares of Common Stock issuable upon (a) conversion of the A-2 Notes and (b) conversion of the shares of Series A Preferred Stock issued upon conversion of the A-1 Notes.

"Notes" means the A-1 Notes and the A-2 Notes and any notes that may be issued under this Agreement in substitution or exchange for any outstanding Notes.

"NMS" means the Nasdaq National Stock Market or any other national stock exchange or quotation system that is the primary market for the Common Stock.

"Objection Schedule" is defined in Section 2.3(b).

"Offered Securities" means the Notes, the Guarantees, the Warrants, the Note Shares and Warrant Shares.

"Optional Conversion" is defined in Section 9.5(a).

"Parent Disclosure Letter" means the disclosure letter of Parent referred to in the Combination Agreement

"Parent SEC Reports" means all forms, reports and documents required to be filed by Parent with the SEC since January 1, 2001 through the date of this Agreement.

"Party" means a party to this Agreement.

"Pihana" means Pihana Pacific, Inc., a Delaware corporation.

"Pihana Disclosure Letter" means the disclosure letter of Pihana referred to in the Combination Agreement.

"Preferred Stock" means the Series A Preferred Stock and the Series A-1 Preferred Stock.

"Preferred Warrant" is defined in the recitals to this Agreement.

"Preferred Warrant Shares" means the number of shares of Preferred Stock issuable, on any date of determination, upon exercise of a Preferred Warrant.

"Preliminary Schedule" is defined in Section 2.3(a)

"PIK Notes" is defined in Section 9.8.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the Closing Date, by and among Parent and the Initial Purchasers named therein in the form of Exhibit 7.1(j)(iv).

"Requisite Holders" means, at any time of determination, (a) the Holders of more than fifty percent in aggregate principal amount of the then outstanding A-1 Notes and A-2 Notes, voting together as single class, or (b) the holders of more than fifty percent in aggregate principal amount of the commitments under Section 2.2 to purchase A-1 Notes and A-2 Notes, voting together as a single class.

"Second Priority Lien" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than First Priority Liens and Permitted Liens.

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

"Second Anniversary" means the second anniversary of the Closing Date.

"Secured Parties" is defined in the Intercreditor Agreement.

"Securities Act" means the Securities Act of 1933.

"Series A Preferred Stock" means the Series A Preferred Stock, par value $0.001 per share, of Parent.

"Series A-1 Preferred Stock" means the Series A-1 Preferred Stock, par value $0.001 per share, of Parent.

"STT Communications" means STT Communications Ltd., a company organized under the laws of the Republic of Singapore.

"Subsidiaries" has the meaning set forth in the Credit Agreement. For the avoidance of doubt, each Person that is acquired pursuant to the Combination Documents shall be deemed to be a Subsidiary of Parent as of the Closing Date.

"Taxes" is defined in Section 11.2(c).

"Third Anniversary" means the third anniversary of the Closing Date.

"Trading Day" means any day upon which the NMS is open and providing quotations of the Common Stock.

"Trading Period" means any consecutive thirty Trading Day period in which (a) on each day of such period (a) the closing price of the Common Stock on the NMS exceeds $1.1781 (subject to adjustments as provided in Section 9.6) and (b) the average daily trading volume of the Common Stock on the NMS exceeds 550,000 shares (which number of shares shall be deemed automatically adjusted to give effect to any stock splits, dividends, reclassifications, combinations or recapitalizations occurring after the date of this Agreement).

"Transaction Documents" means the Combination Documents and the Financing Documents.

"Transfer" means any sale, transfer, pledge, hypothecation, contribution, distribution, gift or other disposition of a security, or entry into put, call, straddle, forward sale, hedging or other derivative transaction with respect to a security.

"Warrant Shares" means shares of Common Stock or Preferred Stock, as the case may be, issuable upon (a) exercise of the Common Warrants, (b) conversion of shares of Conversion Preferred Stock issued upon exercise of the Preferred Warrant, (c) exercise of the Change in Control Warrants and (d) exercise of the Cash Trigger Warrant.

"Warrants" means the Cash Trigger Warrants, the Common Warrants, the Preferred Warrants and the Change in Control Warrants.

1.2 Accounting Principles. Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize accounting principles and policies in conformity with those used to prepare the Financial Statements.

1.3 Interpretation.

(a) When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation."

(c) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and annex, article, section, paragraph, exhibit and schedule references are to the annex, articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(d) The plural of any defined term shall have a meaning correlative to such defined term, and words denoting any gender shall include all genders and the neuter. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(e) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

(f) A reference to any legislation or to any provision of any legislation shall include any modification, amendment or re-enactment thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued under or related to such legislation.

(g) The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

(h) No prior draft of this Agreement nor any course of performance or course of dealing shall be used in the interpretation or construction of this Agreement.

(i) The Parties intend that each provision of this Agreement shall be given full separate and independent effect. Although the same or similar subject matters may be

addressed in different provisions of this Agreement, the Parties intend that, except as expressly provided in this Agreement, each such provision be read separately, be given independent significance and not be construed as limiting any other provision in this Agreement (whether or not more general or more specific in scope, substance or context).

2. The Purchase and Sale of the Securities

2.1 Authorization of the Financing

(a) Parent has authorized the issuance, sale and delivery of the Notes to the Purchasers, in the original aggregate principal amount of up to $40,000,000, to be dated the date of issuance thereof, to mature on the Maturity Date, to bear interest on the unpaid balances thereof from the date of issuance thereof until the principal thereof shall be paid in full at the rate of 14.0% per annum for the A-1 Notes and 10.0% per annum for the Series A-2 Notes based upon a 360 day year for actual days elapsed, payable on each May 1 and November 1 in arrears, commencing on May 1, 2003 and to be substantially in the form of Exhibit 2.1(a).

(b) Parent has authorized the issuance, sale and delivery of (i) the Preferred Warrants, substantially in the form of Exhibit 2.1(b)(i), to the A-1 Purchaser, (ii) the Common Warrants to the A-2 Purchasers, if any, each substantially in the form of Exhibit 2.1(b)(ii), and the Change in Control Warrants to the Purchasers, each substantially in the form of Exhibit 2(b)(iii). The Warrants have a cashless exercise price (subject to anti-dilution adjustments) of $0.01 per Warrant Share.

(c) Each of the Existing Guarantors has, or shall have prior to the Closing, authorized its Guaranty. Each of the Existing Guarantors is, or shall be at the Closing, also obligated under the Credit Agreement and shall receive a direct and substantial benefit as a result of the use of the proceeds of the sale of the Notes to reduce the outstanding obligations under the Credit Agreement.

2.2 Obligations to Purchase and Sell Securities.

(a) Subject to the terms and conditions in this Agreement, Parent agrees to issue and sell to the Purchasers and each Purchaser, severally and not jointly, agrees to purchase from Parent, the Notes and the Warrants in the series and denominations set forth opposite such Purchaser's name on Schedule 1 or Schedule 2, as the case may be. Each A-2 Purchaser, if any, shall deliver, on or before the Determination Date, a fully-executed counterpart signature page to this Agreement to each of Parent and the A-1 Purchaser whereby such A-2 Purchaser shall be made a Party. The execution and delivery of such counterpart signature page shall represent such A-2 Purchaser's acceptance of, and agreement to become a party to and be bound by, all of the terms and conditions of this Agreement and until delivery of a counterpart signature page, no A-2 Purchaser shall have any obligation to purchase any A-2 Notes or Warrants. A-2 Notes shall be purchased and sold in increments of $1,000,000 principal amount.

(b) Subject to the satisfaction or waiver of the conditions in Article 7 and concurrently with the closing of the transactions contemplated by the Combination Agreement, the transactions contemplated in Section 2.2(a) shall be consummated (the "Closing"), at 10:00 a.m. (New York City time) the offices of Latham & Watkins, 885 Third Avenue, Suite 1000, New York, New York 10022-4802, or at such other time and place and the Parties may agree.

(c) At the Closing, each Purchaser shall deliver to Parent a wire transfer of immediately available funds in the amount set forth opposite such Purchaser's name on Schedule 1 or Schedule 2, as the case may be, against delivery of duly-executed Notes, Common Warrants or Preferred Warrants and Change in Control Warrants, dated as of the date of date during which the Closing Date occurs, registered in such Purchaser's name, in the series and denominations set forth opposite such Purchaser's name on Schedule 1 or Schedule 2, as the case may be. Wire transfers shall be sent to Parent's account identified to the Purchasers at least five Business Days before the Closing Date.

(d) On the Determination Date, Schedule 1 shall be amended to reflect the A-1 Principal Amount and, if necessary, Schedule 2 shall be amended to reflect the A-2 Principal Amount and shall include the A-2 Purchasers, if any, and the respective principal amount of A-2 Notes to be purchased by each A-2 Purchaser. STT Communications shall have the right, but not the obligation, to purchase, and Parent shall reserve for purchase by STT Communications, A-1 Notes up to the A-1 Principal Amount; *provided* that STT Communications shall be obligated to purchase no less than $30,000,000 principal amount of A-1 Notes (together with the Preferred Warrants), and *provided further* that Jaguar Parent may assign its right to purchase up to $10,000,000 principal amount of Notes to one or more assignees who are current stockholders of Pihana or other persons reasonably acceptable to Parent, and in such event, such assignees shall purchase A-2 Notes in accordance with this Section 2.2 (together with Common Warrants as determined pursuant to Section 2.3). Any amount of Notes not purchased by Jaguar or its assignees may be sold by Parent in the form of A-2 Notes to Purchasers that Parent may select in its discretion, prior to the Determination Date, in an amount up to the A-2 Principal Amount (together with Common Warrants as determined pursuant to Section 2.3). Notwithstanding the foregoing, prior to the Determination Date, LoneTree Capital Management LLC or its designated affiliates shall have the right, but not the obligation, to purchase, and Parent shall reserve for purchase by LoneTree Capital Management LLC or its affiliates, not more than $2,000,000 principal amount of A-2 Notes (together with any Common Warrants as determined pursuant to Section 2.3), regardless of the amount, if any, of A-2 Notes purchased by any other Purchaser, and the amount of A-2 Notes so purchased by LoneTree Capital Management LLC or its designated affiliates shall be deducted from the $10,000,000 principal amount of Notes as to which Jaguar Parent may assign purchase rights. A Person may only become an assignee of Jaguar Parent under this Section 2.2 if such Person delivers a fully executed counterpart signature page to this Agreement on or prior to the Determination Date.

2.3 Determination of Warrant Shares.

(a) On the Determination Date, Parent shall cause to be delivered to the Purchasers and their special counsel a schedule (the "Preliminary Schedule") calculating (a) the fully-diluted capitalization of Parent, as of the Closing Date, after giving pro-forma effect to the transactions contemplated by the Combination Documents and (b) the number of shares of Conversion Preferred Stock issuable upon exercise of the Preferred Warrants and the number of shares of Common Stock issuable upon exercise of the Common Warrants. The Common

Warrants shall be exercisable into a number of shares of Common Stock representing a percentage of the fully-diluted capitalization of Parent equal to the product of the A-2 Principal Amount and 0.000000275. The Preferred Warrant shall be exercisable into a number of shares of Conversion Preferred Stock representing a percentage of the fully-diluted capitalization of Parent equal to the product of the A-1 Principal Amount and 0.000000275.The Preliminary Schedule shall be in a form substantially similar to Schedule 2.3(a) which shows the pro forma fully-diluted capitalization of Parent as of August 31, 2002 and the number of Warrant Shares that would be issuable with respect to the A-1 Notes and A-2 Notes, if any.

(b) If the Purchasers object to the calculation in the Preliminary Schedule, they shall provide on the eighth Business Day prior to the anticipated date on which the Closing is expected to occur, their schedule (the "Objection Schedule") calculating (a) the fully diluted capitalization of Parent, as of the Closing Date, after giving pro-forma effect to the transactions contemplated by the Combination Documents and (b) the number of shares of Conversion Preferred Stock issuable upon exercise of the Preferred Warrant and the number of shares of Common Stock issuable upon exercise of the Common Warrants. Such schedule shall be in a form substantially similar to Schedule 2.3(a) which shows the fully diluted capitalization of Parent as of August 31, 2002 and the number of Warrant Shares that would be issuable with respect to the A-1 Notes and A-2 Notes, if any.

(c) If Parent objects to the Objection Schedule on or before the third Business Day before the Closing Date, Parent and representatives of the Purchasers shall request that Ernst & Young LLP prepare a final schedule (the "Final Schedule") on or before the Business Day immediately before the Closing, after reviewing the Preliminary Schedule and the Objection Schedule. The number of Preferred Warrant Shares and Common Warrant Shares set forth in the Final Schedule shall be conclusive as to the number of shares issuable, as of the Closing Date (subject to future adjustment as provided in the Warrants), upon exercise of the Warrants.

2.4 Cash Trigger Warrants. At Closing, Parent shall issue the Cash Trigger Warrants. The Series A Cash Trigger Warrants and the Series B Cash Trigger Warrants shall represent $10,000,000 and $20,000,000, respectively, of the aggregate cash exercise price payable under the Cash Trigger Warrants. The Cash Trigger Warrants will be issued to the Purchasers, and other Persons who will be stockholders of Parent following the Closing, in such amount and allocations as shall be mutually agreed among the Purchasers prior to Closing.

3. Representations and Warranties of the Issuers. Parent hereby represents and warrants to the Purchasers that the statements contained in this Article 3 are true and correct.

3.1 Authority Relative to This Agreement. Subject to obtaining approval of Parent stockholders, Parent and each Existing Guarantor has all necessary corporate power and authority to execute and deliver each of the Financing Documents to which it is a party and to consummate the transactions contemplated by this Agreement. Except for a vote of Parent stockholders, the execution and delivery of each of such Financing Documents by Parent and each Existing Guarantor and the consummation by Parent and each Existing Guarantor, as applicable, of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of

Parent are necessary to authorize each of such Financing Documents or to consummate the transactions contemplated by this Agreement. Each of the Financing Documents to which Parent or an Existing Guarantor is a party has been duly and validly executed and delivered by Parent and each Existing Guarantor, as applicable, and, assuming, approval of Parent stockholders and the due authorization, execution and delivery by the other parties thereto, constitutes a legal, valid and binding obligation of Parent and each Existing Guarantor, as applicable, enforceable against Parent and each Existing Guarantor, as applicable, in accordance with its terms.

3.2 No Conflict; Required Filings and Consents

(a) The execution and delivery by Parent and each Existing Guarantor of each of the Financing Documents to which it is a party do not, and the performance by Parent and each Existing Guarantor of its respective obligations under each of the Financing Documents will not, (i) conflict with or violate the certificate of incorporation or bylaws of Parent or any of its Subsidiaries, (ii) conflict with or violate in any material respect any Law applicable to Parent or any of its Subsidiaries or by which any property or asset of Parent or any of its Subsidiaries is bound or affected, or (iii) conflict with, result in any material breach of or constitute a material default (or an event which with notice or lapse of time or both would become a default) under, require consent, approval or notice under, give to others any right of termination, amendment, acceleration or cancellation of, require any payment under, or result in the creation of a lien or other encumbrance on any material property or asset of Parent or any of its Subsidiaries pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any of its Subsidiaries is a party or by which any material property or asset of Parent or any of its Subsidiaries is bound or affected, except in the case of clauses (ii) and (iii) for such conflicts, violations, breaches, defaults, consents, approvals, notices or other rights that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and, except in the case of clause (iii), for the liens contemplated by the Financing Documents.

(b) The execution and delivery by Parent and each Existing Guarantor of each of the Financing Documents to which it is a party do not, and the performance of its respective obligations under this Agreement will not, require any consent, approval, order, permit, or authorization from, or registration, notification or filing with a Governmental Entity, except for such other consents, approvals, orders, permits, authorizations, registrations, notifications or filings, which if not obtained or made could not reasonably be expected, individually or in the aggregate, to prevent or materially delay the consummation of the transactions contemplated by this Agreement, except for filings with Government Entities with respect to collateral contemplated by the Financing Documents.

3.3 Collateral.

(a) The execution and delivery of the Collateral Documents by Parent and any Existing Guarantor, together with the actions to be taken on or prior to the Closing Date for the benefit of the Holders shall create a valid security interest in the Collateral, subject only to the First Priority Liens and the Permitted Liens, and all filings and other actions necessary or desirable to perfect and maintain the perfection and First Priority or Second Priority status, as applicable, of such Liens have been or shall be duly made or taken by the Closing Date, other

than the actions required under federal law to register and record interests in intellectual property.

(b) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (i) the pledge or grant by Parent or any Existing Guarantor of the Liens purported to be created in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any of the Collateral Documents or (ii) the exercise by the Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to any of the Collateral Documents or created or provided for by applicable law), except for filings or recordings as may be required in connection with the perfection of security interests, the disposition of any Investment Related Property, or by laws generally affecting the offering and sale of securities.

(c) Except with respect to any Permitted Lien and such as may have been filed in favor of Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office.

(d) All information supplied to the Collateral Agent by or on behalf of Parent or any Existing Guarantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

(e) Without limiting the generality of the foregoing, Parent and each Existing Guarantor represents and warrants that all of its Cash and Cash Equivalents shall be maintained in accounts in existence as of the Closing in which the Collateral Agent has a perfected security interest or such other accounts as may be pre-approved by the Collateral Agent, and in which Collateral Agent has a perfected security interest, other than Permitted Liens.

3.4 Governmental Regulation. Neither Parent nor the Existing Guarantor is subject to regulation under the Public Utility Holding Parent Act of 1935, the Federal Power Act or the Investment Parent Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations or Financing Document Obligations unenforceable. Neither Parent nor the Existing Guarantor is a “registered investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

3.5 Margin Stock. Neither Parent nor the Existing Guarantor is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of sale of the Notes to the Purchasers shall be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

3.6 Private Placement; No Brokers. Neither Parent nor any of its Subsidiaries, nor any agent acting on behalf of any of them has taken any action that (a) would cause the issuance and sale of any of the Offered Securities to be in violation of the provisions of Section 5 of the Securities Act, or (b) violates the provisions of any securities or blue sky law of any applicable jurisdiction. No broker, financial advisor, finder or other Person is entitled to any fee from Parent or any of its Subsidiaries in connection with the transactions contemplated by the Financing Documents, except for Salomon Smith Barney Inc. whose engagement letter has been provided to special counsel for the Purchasers.

3.7 Incorporation of Representations and Warranties by Reference.

(a) Parent hereby represents and warrants (i) to the Purchasers that the representations and warranties of Parent, in Article 4 of the Combination Agreement, as qualified by the Parent Disclosure Letter are true and correct as if each such representation or warranty was set forth in full herein; (ii) to the A-1 Purchaser that the representations and warranties in Article 3A of the Combination Agreement, as qualified by the Pihana Disclosure Letter, are true and correct as if each such representation or warranty were set forth in full herein; and (iii) to the A-2 Purchasers, if any, that the representations and warranties in Article 3B of the Combination Agreement, as qualified by the i-STT Disclosure Letter, are true and correct as if each such representation or warranty were set forth in full herein. Solely with respect to this Section 3.7, the definitions of the applicable capitalized terms in the Combination Agreement are applicable to such representations and warranties.

(b) Notwithstanding the survival and remedies provisions of Combination Agreement, for purposes of this Agreement only, each such representation and warranty shall survive the Closing and the purchase and sale of the Offered Securities, the transfer by any Purchaser of any Offered Securities or portion thereof or interest therein and the payment of any Note, and may be relied upon by Purchaser or any transferee of an Offered Security or Parent, as applicable, regardless of any investigation made at any time by or on behalf of a Purchaser or any transferee of an Offered Security or Parent in accordance with Section 11.4.

3.8 No Misstatements. No representation or warranty made by Parent or any Existing Guarantors in this Agreement, any other Transaction Documents, any certificate delivered or written statements furnished deliverable to the Purchasers by or on behalf of Parent or any Existing Guarantor for use in connection with the transactions contemplated hereby contains or shall contain, any untrue statement of a material fact or omits or shall not, when taken as a whole, to state a material fact (known to Parent or any Existing Guarantor, in the case of any document not furnished by any of them) necessary to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Parent and each Existing Guarantor to be reasonable at the time made, it being recognized by the Purchasers that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

4. Representations and Warranties of the Purchasers. Each Purchaser, severally and not jointly, represents and warrants to Parent and each Existing Guarantor:

4.1 Investment Intent. Such Purchaser is an "accredited investor" within the meaning of Regulation D under the Securities Act, that it is acquiring the Offered Securities for the purpose of investment and not with a view to the distribution thereof, and that it has no present intention of selling, negotiating, or otherwise disposing of the Offered Securities in violation of applicable law. Such Purchaser has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Offered Securities and is capable of bearing the economic risks of such indefinitely. Such Purchaser understands that Parent is relying on statements contained in this Section 4.1 to establish an exemption from registration under federal and state securities laws.

4.2 ERISA Matters. The source of funds being used by such Purchaser to pay the purchase price of the Notes being purchased by it hereunder constitutes assets: (i) allocated to the "insurance company general account" (as such term is defined under Section V of the United States Department of Labor's Prohibited Transaction Class Exemption ("PTCE") 95-60) of such Purchaser, and the purchase and holding of the Notes by Purchaser shall at all times satisfy all of the applicable requirements for relief under PTCE 95-60, (ii) allocated to a separate account maintained by the Purchaser in which no employee benefit plan, or group of plans maintained by the same employer, participates to the extent of 10% or more, and the purchase and holding of the Notes by Purchaser each shall at all times satisfy all of the applicable requirements for relief under PTCE 90-1 or (iii) of an investment fund or other source, the assets of which do not include assets of any employee benefit plan within the meaning of ERISA. For the purpose of this section, the terms "separate account" and "employee benefit plan" shall have the respective meanings specified in Section 3 of ERISA.

4.3 Authority Relative to This Agreement. Such Purchaser has all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by such Purchaser and the consummation by such Purchaser of the transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate or partnership action and no other corporate or partnership proceedings on the part of such Purchaser are necessary to authorize this Agreement or to consummate the transactions contemplated by this Agreement. This Agreement has been duly and validly executed and delivered by such Purchaser and, assuming the due authorization, execution and delivery by Parent and the other Parties, constitutes a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms.

4.4 No Conflict; Required Filings and Consents

(a) The execution and delivery of this Agreement by such Purchaser do not, and the performance of its obligations under this Agreement by such Purchaser will not, (i) conflict with or violate the certificate of incorporation or bylaws (or similar organizational documents) of such Purchaser, (ii) conflict with or violate in any material respect any Law applicable to such Purchaser or by which any property or asset of such Purchaser or affected, or (iii) conflict with, result in any material breach of or constitute a material default (or an event

which with notice or lapse of time or both would become a default) under, require consent, approval or notice under, give to others any right of termination, amendment, acceleration or cancellation of, require any payment under, or result in the creation of a lien or other encumbrance on any material property or asset of such Purchaser pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which such Purchaser is a party or by which any material property or asset of such Purchaser is bound or affected, except in the case of clauses (ii) and (iii) for such conflicts, violations, breaches, defaults, consents, approvals, notices or other rights that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) The execution and delivery of this Agreement by such Purchaser do not, and the performance of its obligations under this Agreement by such Purchaser will not, require any consent, approval, order, permit, or authorization from, or registration, notification or filing with a Governmental Entity, except for such other consents, approvals, orders, permits, authorizations, registrations, notifications or filings, which if not obtained or made could not reasonably be expected, individually or in the aggregate, to prevent or materially delay the consummation of the transactions contemplated by this Agreement.

4.5 Access to Funds. Such Purchaser currently has sufficient immediately available funds in cash or cash equivalents and shall on the Closing Date have sufficient immediately available funds, in cash, to pay the purchase price set forth opposite such Purchaser's name on Schedule 1 and to effect the transactions contemplated hereby.

4.6 Legend. Such Purchaser understands that each certificate or other document evidencing any of the Offered Securities shall be endorsed with the legends in the form set forth in Section 9.9(d).

4.7 Private Placement; No Brokers. Neither such Purchaser nor any agent acting on behalf of it has taken any action that (a) would cause the issuance and sale of any of the Offered Securities to be in violation of the provisions of Section 5 of the Securities Act or (b) violates the provisions of any securities or blue sky law of any applicable jurisdiction. No broker, financial advisor, finder or other Person is entitled to any fee from such Purchaser for which Parent would be liable in connection with the transactions contemplated by the Financing Documents.

5. Affirmative Covenants. Parent and each Existing Guarantor, jointly and severally, covenant and agree that so long as the Notes are outstanding, Parent and each Existing Guarantor shall, and shall cause each of its Restricted Subsidiaries to perform, all covenants set forth or incorporated by reference in this Section 5. If any covenant in the Credit Agreement incorporated by reference in this Section 5 shall be amended, modified or superseded, or compliance therewith shall be waived, as provided in the Credit Agreement, (a) such amendment, modification, superseding or waiver shall also be automatically effective with respect to such incorporated by reference covenant concurrently with the effectiveness of such amendment, modification, superseding or waiver under the Credit Agreement without any action of Parent or any Holder and (b) Parent shall promptly provide notice to each Holder of such action (together with a copy of any instrument effecting such amendment, modification or waiver) with respect to such covenant. If requested by Parent, the Holders shall promptly execute an instrument evidencing such amendment, modification or waiver.

5.1 Affirmative Covenants of Credit Agreement. Parent shall at all times perform and comply and cause its Subsidiaries to perform and comply with all affirmative covenants set forth in the Credit Agreement, as if such covenants were set forth in full herein, *mutatis mutandis*.

5.2 Certificate Upon Event of Default. Promptly upon any officer of Parent obtaining knowledge (a) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Parent with respect thereto; or (b) that any Person has given any notice to Parent or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8(a)(iii), a certificate of an executive officer of Parent specifying the nature and period of existence of such condition or event, or specifying the notice given and action taken by any such Person and the nature of any such claimed Event of Default, Default, event or condition, and what action Parent has taken, is taking and proposes to take with respect thereto.

5.3 Notice of Adverse Proceeding. Promptly upon any officer of Parent obtaining knowledge of the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Parent to the Holders, or any material development in any Adverse Proceeding that, if adversely determined, could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby or any of the other Financing Documents, written notice thereof together with such other information as may be reasonably available to Parent to enable the Holders and their counsel to evaluate such matters.

5.4 Further Assurances. At any time or from time to time upon the request of Requisite Holders, Parent and any Guarantor shall, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Requisite Holders or the Collateral Agent may reasonably request in order to effect fully the purposes of the Financing Documents. In furtherance and not in limitation of the foregoing, Parent and each Guarantor shall take such actions as Requisite Holders or the Collateral Agent may reasonably request from time to time (including the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, landlord's consents and estoppels, control agreements, stock powers, financing statements and other documents as contemplated by the Financing Documents, the filing or recording of any of the foregoing, title insurance with respect to any of the foregoing that relates to any Real Estate Asset, and the delivery of stock certificates and other collateral with respect to which perfection is obtained by possession) to ensure that the Obligations and the Financing Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Parent, and its Restricted Subsidiaries and all of the outstanding Capital Stock of Parent's Subsidiaries (subject to limitations contained in the Credit Documents with respect to Foreign Subsidiaries).

5.5 Tax Treatment

(a) Parent and each Guarantor shall use their best efforts to ensure that any aspect of the Combination is not treated as a tax-free reorganization under the Internal Revenue Code.

(b) For purposes of determining the extent to which gain may be recognized pursuant to Section 897 of the Internal Revenue Code, the Parties agree to treat the conversion of Notes to Conversion Preferred Stock or Common Stock, as the case may be, pursuant to Sections 9.4 and 9.5 as an event in which no gain or loss is realized for United States federal income tax purposes, unless there is a change in Law affecting such treatment that becomes effective after the date of this Agreement. Notwithstanding the foregoing, to the extent any Conversion Preferred Stock or Common Stock is issued with respect to any accrued and unpaid interest (including PIK Notes) on a Note upon the conversion, the amount equal to such accrued and unpaid interest (including PIK Notes) shall constitute interest income to the Holder of such Note, unless such Holder previously included such amount as income.

5.6 Collateral Obligations. Parent shall cause each Guarantor to fulfill its obligations under the A-1 Security Documents and any amendment thereof.

5.7 Subsidiaries. If, after the date of this Agreement, any Person becomes a Restricted Subsidiary of Parent, Parent shall (except as provided in the A-1 Security Documents) (i) promptly cause such Restricted Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to the Holders and Collateral Agent a Counterpart Agreement duly executed by an Authorized Officer of such Domestic Subsidiary, (ii) cause such Domestic Subsidiary to execute a Guaranty, and (iii) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as may be reasonably requested by any Holder. With respect to each such Subsidiary, Parent shall promptly send to the Holders and Collateral Agent written notice setting forth with respect to such Person the date on which such Person became a Subsidiary of Parent and details of Parent's ownership thereof.

5.8 Singapore Holding Company. From and after the Closing, Parent shall operate Interco Singapore solely as a holding company for the outstanding shares of Jaguar, and Parent shall ensure that each of Interco Singapore, Jaguar Singapore and their respective Subsidiaries shall:

(a) not dissolve its affairs or consolidate with or merge with any other Person or allow any other Person to consolidate with or merge into it nor enter into any other form of reconstruction or arrangement;

(b) not acquire or invest in any way in any assets other than in the ordinary course of operations;

(c) not enter into any transaction with any holding company, subsidiary or affiliate of Parent other than on normal commercial arms' length terms;

(d) not make or grant any loan or advance or provide or extend any credit or accommodation other than customary short term trade credit in the ordinary course of trading or give any guarantee, indemnity or other assurance against loss to or for the benefit of

any Person or act as surety or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any other Person;

(e) not incur, assume or permit to exist any Indebtedness in respect of borrowed moneys other than:

(i) trade or any other similar Indebtedness raise din the ordinary course of business and on bona fide open market terms; and

(ii) any other indebtedness which has been approved in writing by the A-1 Purchaser prior to such indebtedness being incurred;

(iii) not declare or pay out any dividend or repay, redeem or repurchase any share capital; and

(f) cause any entity which becomes its subsidiary to execute and deliver to the A-1 Purchaser such further or additional documents for the purposes of securing the Secured Debt (as defined in the A-1 Security Documents) in such form and in relation to such of its assets as the A-1 Purchaser shall require.

6. Negative Covenants. Parent and the Guarantors, jointly and severally, covenant and agree that, so long as any Notes are outstanding Parent and each Guarantor shall perform, and shall cause each of its Restricted Subsidiaries to perform, all covenants in this Section 6. If any covenant in the Credit Agreement incorporated by reference in this Section 6 shall be amended, modified or superseded, or compliance therewith shall be waived, as provided in the Credit Agreement, (a) such amendment, modification, superseding or waiver shall also be automatically effective with respect to such incorporated by reference covenant concurrently with the effectiveness of such amendment, modification, superseding or waiver under the Credit Agreement without any action of Parent or any Holder and (b) Parent shall provide notice to each Holder of such action (together with a copy of any instrument effecting such amendment, modification or waiver) with respect to such covenant. If requested by Parent, the Holders shall promptly execute an instrument evidencing such amendment, modification or waiver.

6.1 Negative Covenants of Credit Agreement .

Parent shall at all times perform and comply and cause its Subsidiaries to perform and comply with all negative covenants set forth in Section 6 of the Credit Agreement, as if such covenants were set forth in full herein, *mutatis mutandis*.

6.2 Usury Laws. To the extent permitted law, neither Parent nor the Guarantors shall seek to avoid, limit or otherwise fail to discharge any of the Financing Obligations under any applicable usury or similar laws.

6.3 Tax Treatment. Neither Parent nor the Guarantors shall take any action that would cause or would be likely to cause the Combination to be treated as a tax-free reorganization under the Internal Revenue Code.

7. Conditions to Closing

7.1 Purchasers' Closing Conditions. The obligation of each Purchaser to purchase and pay for the Offered Securities to be purchased by it at the Closing is subject to the satisfaction or waiver, prior to or at the Closing, of the following conditions:

(a) Each Purchaser shall have received from counsel for Parent and the Existing Guarantor, (i) an opinion or opinions substantially in the form set forth in Exhibit 7.1(a), addressed to Purchasers, dated the Closing Date, and otherwise reasonably satisfactory in substance and form to the Purchasers and their special counsel and (ii) a letter entitling such Purchaser to rely on all opinions of counsel delivered to the Lenders in connection with the Collateral Documents.

(b) The representations and warranties of Parent and each Existing Guarantor in this Agreement shall be true and correct in all material respects (except for such representations and warranties that are qualified as to materiality or Material Adverse Effect, which shall be true and correct in all respects) when made and as if made at the Closing Date, except to the extent the representation or warranty is limited by its terms to another date. There shall exist on the Closing Date and after giving effect to such transactions, no Event of Default nor a Default under this Agreement, the Credit Agreement or any other material contract to which Parent or any of its Subsidiaries is a party for which the applicable cure period has not expired.

(c) Parent and each of the Existing Guarantors shall have performed and complied in all material respects with all covenants in this Agreement required to be complied with on or prior to the Closing Date.

(d) The Purchasers shall have received a certificate, dated as of the Closing Date, executed by the chief executive officer and the chief financial officer of Parent stating that the conditions set forth in Sections 7.1(b) and 7.1(c) have been satisfied.

(e) The conditions set forth in Section 7.01(g)(ii) and Section 7.01(g)(iii) of the Combination Agreement shall have been satisfied or waived.

(f) The Purchasers shall have received, in form and substance satisfactory to them and their counsel, a certificate duly executed by an executive officer of Parent certifying, on the Closing Date, that concurrent with the consummation of the transactions contemplated by this Agreement, the transactions contemplated by the Combination Agreement shall have been consummated in accordance with the terms of the Combination Agreement.

(g) The offering, issuance, purchase and sale of the Offered Securities by the Purchasers, on the Closing Date, on the terms and subject to the conditions of this Agreement, shall not be prohibited by any applicable law or governmental regulation (including Section 5 of the Securities Act and Regulations T, U, or X of the Federal Reserve Board) and shall not subject any Purchaser to any tax, penalty, liability, or other onerous condition under or pursuant to any applicable law or governmental regulation.

(h) Parent and each Existing Guarantor shall have received all authorizations, consents, approvals, licenses, franchises, permits, and certificates by or of all Governmental Authorities in each case, necessary for the issuance of the Offered Securities, and the execution and delivery of the Financing Documents and all of them shall be in full force and effect on the Closing Date.

(i) No preliminary or permanent injunction or other order issued by any Governmental Authority, nor any state, rule, regulation, decree or executive order promulgated or enacted by any Governmental Authority, which declares the Financing Documents invalid or unenforceable in any respect or which prevents the consummation of the transactions contemplated hereby or thereby, shall be in effect.

(j) Financing Documents.

(i) Each of the parties to the Intercreditor Agreement shall have executed and delivered to each other a fully executed counterpart of the Intercreditor Agreement;

(ii) Each Existing Guarantor shall have executed and delivered to their respective Guarantees to the Purchasers;

(iii) Each of the parties to the A-1 Security Documents shall have executed and delivered to each other a fully executed counterpart of each of the A-1 Security Documents, together with all other documents which may be required or necessary for the purposes of perfecting each of the A-1 Security Documents, any title deeds or share certificates relating to any asset in respect of which a security interest has been created pursuant to the A-1 Security Documents and the evidence of the amendment of the constitutive documents of any corporation whose shares are charged or mortgaged pursuant to the A-1 Security Documents as may be necessary or desirable in connection with such charge or mortgage;

(iv) Each of the parties to the Registration Rights Agreement shall have executed and delivered to each other a fully executed counterpart of the Registration Rights Agreement; and

(v) All of the Notes and the Warrants shall have been issued and sold pursuant to this Agreement and duly executed registered Notes and Warrants therefor shall have been delivered to the respective Purchasers of such Offered Securities.

(k) Parent and the Existing Guarantors shall have paid all of the fees, costs, and expenses of the Purchasers' special counsel to the extent provided in Section 11.2(a).

(l) Parent shall have delivered or shall have caused to be delivered, to the Purchasers copies of the following documents, duly certified, or the following certificates, as applicable:

(i) Resolutions of the board of directors of Parent (A) authorizing the issuance of the Warrants, the shares of Conversion Preferred Stock issuable upon conversion of the A-1 Notes and the exercise of the Preferred Warrant, and the shares of Common Stock issuable upon conversion of the A-2 Notes, if any, and exercise of the Common Warrants, the Change in Control Warrants and the Cash Trigger Warrants and

the execution, delivery, and performance of the Financing Documents to which it is a party, (B) authorizing the consummation of the transactions contemplated by the Financing Documents to which it is a party and (C) authorizing all other actions to be taken by Parent in connection with the Financing Documents, and the Credit Documents to which it is a party;

(ii) Certificates, signed by the secretary or an assistant secretary of Parent, dated as of the Closing Date, as to (A) the incumbency, and containing the specimen signature or signatures, of the Person or Persons authorized to execute the Financing Documents to which it is a party on behalf of Parent, together with evidence of the incumbency of such secretary or assistant secretary, and (B) the authenticity of Parent's certificate of incorporation and Parent's bylaws (copies of which shall be attached to such certificates); and

(iii) A certificate of status or good standing of Parent, from the Secretary of State of the State of Delaware, and of each other state or other jurisdiction in which Parent is qualified to do business, dated no earlier than ten days prior to the Closing Date.

(m) Each Existing Guarantor shall have delivered or shall have caused to be delivered, to Purchasers copies of the following documents, duly certified, or the following certificates, as applicable:

(i) Resolutions of the board of directors of the Existing Guarantor authorizing (A) the execution, delivery, and performance of the Financing Documents to which it is a party, (B) the consummation of the transactions contemplated by the Financing Documents to which it is a party and (C) all other actions to be taken by such Existing Guarantor in connection with the Financing Documents, and the Credit Documents to which it is a party;

(ii) Certificates, signed by the secretary or an assistant secretary of such Existing Guarantor, dated as of the Closing Date, as to (A) the incumbency, and containing the specimen signature or signatures, of the Person or Persons authorized to execute the Financing Documents to which it is a party on behalf of the Existing Guarantor, together with evidence of the incumbency of such secretary or assistant secretary, and (B) the authenticity of such Existing Guarantor's certificate of incorporation and such Existing Guarantor's bylaws (copies of which shall be attached to such certificates); and

(iii) A certificate of status or good standing of the Existing Guarantor, from the Secretary of State of the state of organization of the Existing Guarantor, and of each other state or other jurisdiction in which the Existing Guarantor is qualified to do business, dated no earlier than five days prior to the Closing Date.

7.2 Parent Closing Conditions. The obligation of Parent to issue, sell and deliver the Offered Securities to be sold by it at the Closing is subject to the satisfaction or waiver, prior to or at the Closing, of the following conditions:

(a) The representations and warranties of each Purchaser in this Agreement shall be true and correct in all material respects (except for such representations and warranties that are qualified as to materiality, which shall be true and correct in all respects) when made and as if made at the Closing Date, except to the extent the representation or warranty is limited by its terms to another date.

(b) Each Purchaser shall have performed and complied in all material respects with all covenants in this Agreement required to be complied with on or prior to the Closing Date.

(c) Parent and each Existing Guarantor shall have received all authorizations, consents, approvals, licenses, franchises, permits, and certificates by or of all Governmental Authorities in each case, necessary for the issuance of the Offered Securities, and the execution and delivery of the Financing Documents and all of them shall be in full force and effect on the Closing Date.

(d) No preliminary or permanent injunction or other order issued by any Governmental Authority, nor any statute, rule, regulation, decree or executive order promulgated or enacted by any Governmental Authority, which declares the Financing Documents invalid or unenforceable in any respect or which prevents the consummation of the transactions contemplated hereby or thereby, shall be in effect.

(e) Parent and each Existing Guarantor shall have received all authorizations, consents, approvals, licenses, franchises, permits, and certificates by or of all Governmental Authorities in each case, necessary for the issuance of the Offered Securities, and the execution and delivery of the Financing Documents and all of them shall be in full force and effect on the Closing Date.

(f) The transactions contemplated by the Combination Agreement shall have been consummated in accordance with the terms of the Combination Agreement.

8. Events of Default.

(a) If any one or more of the following conditions or events or any event of default under the Credit Agreement (each, an "Event of Default") shall occur:

(i) Failure by Opco to pay (A) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (B) any interest on any Loan or any fee or any other amount due under any of the Credit Documents within five days after the date due; or

(ii) Failure by Parent to (A) pay when due the principal of the Notes, whether at stated maturity, by acceleration, by voluntary prepayment or otherwise; (B) make, when due, a Change in Control Offer or to pay the offered price in such Change in Control Offer; or (C) pay when due any interest on any Note or any fee or any other amount due under any of the Financing Documents within five days after the date due; or

(iii) (A) Failure of Parent or any Existing Guarantor to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8(a)(i) or (ii)) in an individual principal amount of $250,000 or more or with an aggregate principal amount of $1.0 million or more, in each case beyond the grace period, if any, provided therefor or (B) any breach or default by Parent or any Existing Guarantor with respect to any other material term of one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (A) above or any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness; or (C) breach or default by any Parent or any Existing Guarantor with respect to any other term of Permitted Equipment Financing or Permitted Unsecured Debt, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(iv) Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or any Financing Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant to any Credit Document or Financing Document or in connection with any Credit Document shall be false in any material respect as of the date made or deemed made; or

(v) Failure of any Credit Party to perform or comply with any term or condition contained in Section 2.4, 5.1(h), 5.2 or 6 of the Credit Agreement; or failure to comply with any material term or condition governing insurance of Parent required pursuant to Section 5.5 for a period of fifteen days from the time of receipt of notice under the applicable insurance agreement; or

(vi) If Parent or any Guarantor shall default in the performance of or compliance with any term contained herein or any of the other Financing Documents, other than any such term referred to in any other subsection of this Section 8(a), and such default shall not have been remedied or waived within ten days after the earlier of (A) an officer of Parent or any such Guarantor becoming aware of such default or (B) receipt by Parent or Opco of notice from any Holder of such default; or

(vii) If a Credit Party shall default in the performance of or compliance with any term contained in the Credit Agreement, and such default shall not have been remedied or waived within ten days after the earlier of (A) an officer of Parent, any Guarantor, or any Credit Party becoming aware of such default or (B) receipt by Parent, Opco or any Credit Party of notice from the Administrative Agent or any Lender of such default; or

(viii) (A) A court of competent jurisdiction shall enter a decree or order for relief in respect of Parent or any of its Restricted Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or

similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (B) an involuntary case shall be commenced against Parent or any of its Restricted Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Parent or any of its Restricted Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Parent or any of its Restricted Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Parent or any of its Restricted Subsidiaries, and any such event described in this clause (B) shall continue for sixty days without having been dismissed, bonded or discharged; or

(ix) (A) Parent or any of its Restricted Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Parent or any of its Restricted Subsidiaries shall make any assignment for the benefit of creditors; or (B) Parent or any of its Restricted Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of Parent or any of its Restricted Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8(a)(viii); or

(x) Any money judgment, writ or warrant of attachment or similar process involving (A) in any individual case an amount in excess of $250,000 or (B) in the aggregate at any time an amount in excess of $1.0 million (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Parent or any of its Restricted Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(xi) Any order, judgment or decree shall be entered against Parent or any Guarantor decreeing the dissolution or split up Parent or any such Guarantor and such order shall remain undischarged or unstayed for a period in excess of thirty days; or

(xii) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of Parent, any of its Restricted Subsidiaries or any of their respective ERISA affiliates in excess of $1.5 million during the term hereof; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which exceeds $500,000; or

(xiii) At any time after the execution and delivery thereof, (A) any Guaranty for any reason, other than the satisfaction in full of all Financing Obligations in accordance with the term hereof, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (B) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien in favor of the Holders in any Collateral (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or willful misconduct or the part of the Collateral Agent) purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, or (C) Parent or any Guarantor shall contest the validity or enforceability of any Credit Document or Financing Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party; or

(xiv) Parent or any Restricted Subsidiary is in default on any obligation to make base rental payments under at least one lease with respect to either (A) each of any three Leasehold Properties which are Permitted IBX Facilities or (B) any Leasehold Properties which are designated as "San Jose IBX" and "Secaucus IBX", respectively, on Schedule 1.1(a) to the Credit Agreement; or

(xv) Parent or any of its Subsidiaries incurs, permits or suffers to exist any Lien on the Asian Assets, other than Liens of the type described in by Sections 6.2(b), 6.2(c), 6.2(d), 6.2(e), 6.2(f), 6.2(g), 6.2(h), 6.2(i), 6.2(j), 6.2(k), 6.2(n), 6.2(o), 6.2(p) and 6.2(r) of the Credit Agreement, and Liens pursuant to the A-1 Security Agreements,

then, (1) upon the occurrence of any Event of Default described in Section 8(a)(viii) or 8(a)(ix), automatically, and (2) upon the occurrence of any other Event of Default, at the request of (or with the consent of) the Requisite Holders upon notice to Parent by such Requisite Holders, (A) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Parent and each Guarantor: (i) the unpaid principal amount of and accrued interest on the Notes, and (ii) all other Obligations; (B) Requisite Holders may cause the Collateral Agent to enforce any and all Liens and security interests created pursuant to the Collateral Documents; and (C) Requisite Holders may exercise all other remedies available under Applicable Law (or under the Financing Documents).

(b) If an Event of Default in the Credit Agreement corresponding to an Event of Default in this Section 8 (which shall not include Events of Default specified under Section 8(a)(ii), 8(a)(vi), or 8(a)(xv)) shall be amended, modified or superseded, or compliance therewith shall be waived, as provided in the Credit Agreement (other than an Event of Default

with respect to the payment of the Notes), (i) such amendment, modification, superseding or waiver shall also be automatically effective with respect to the corresponding Event of Default in this Agreement without any action of Parent or any Holder and (ii) Parent shall provide notice to each Holder of such action (together with a copy of any instrument effecting such amendment, modification or waiver) with respect to such Event of Default. If requested by Parent, the Holders shall promptly execute an instrument evidencing such amendment, modification or waiver.

9. Terms of the Notes.

9.1 Registration; Exchange; Substitution of Notes.

(a) Parent shall keep at its principal executive office a register for the registration and transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of the transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and Holder thereof for all purposes of this Agreement. Parent shall not be affected by any notice or knowledge to the contrary. Parent shall give to any holder of a Note that is an institutional investor promptly after receipt of a request, a complete and correct copy of the names and addresses of all registered Holders.

(b) Upon surrender of any Note at the principal executive office of Parent for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly indorsed or accompanied by a written instrument of transfer duly authorized by the Holder or such Holder's attorney duly authorized in writing and accompanied by the address for notices of each transferee of Note or part thereof), Parent shall execute and deliver, at Parent's expense (except as provided below), one or more new Notes (as requested by the transferor) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as the transferor shall request. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. Parent may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than $1,000,000; *provided*, that if necessary to enable the registration of transfer by a Holder of its entire remaining holdings of Notes, one Note may be in a denomination of less than $1,000,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation in Section 4.2.

(c) Upon receipt by Parent of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an institutional investor, notice from such institutional investor of such ownership and such loss, theft, destruction or mutilation), and (i) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to Parent (*provided* that if such Holder is, or is nominee for, an institutional investor, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or (ii) in the case of mutilation, upon surrender and

cancellation thereof, Parent, at its own expense, shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

9.2 Cash Payments on Notes.

(a) Subject to Section 9.2(b), payments of principal and Change in Control Price becoming due and payable on the Notes shall be made in The City of New York from a bank account of Parent located in such jurisdiction. Parent, may at any time, by notice to each Holder, change the place of payment of such Notes so long as such place of payment shall be either the principal office of Parent in The City of New York or an office of a bank or trust company in such jurisdiction.

(b) Notwithstanding Section 9.2(a), Parent shall pay all sums becoming due in cash on each Note for principal or Change in Control Price becoming due on a Note by the method and at the address specified for such purpose on a Purchaser's signature page to this Agreement, or by such other method or at such other address as a Holder shall from time to time provide in writing to Parent for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon the written request of Parent concurrently with or reasonably promptly after payment of any Note, the Holder shall surrender such Note for cancellation, reasonably promptly after such request, to Parent at its principal executive offices. Prior to any sale or other disposition of any Note by any Holder, the Holder shall either indorse on the Note the principal on such Note and the last date to which interest has been paid on such Note or surrender such Note to Parent in exchange for a new Note or Notes pursuant to Section 9.1.

9.3 Acquisition of Notes.

(a) Neither Parent nor any of its Subsidiaries shall purchase or otherwise acquire any Note except pursuant to an offer made pro rata and on the same terms to all Holders of Notes. If Parent or any of its Subsidiaries acquires any Notes, such Notes shall be cancelled and shall not be reissued, and no Note shall be issued in substitution of such Note.

(b) Parent shall not have the right to prepay any Note prior to the Maturity Date.

9.4 Conversion at Option of Holder. Each Holder of A-1 Notes or A-2 Notes, if any, shall have the right, at its option, at any time, and from time to time, after the Closing Date to convert, subject to the terms and provisions of this Section 9.4, as follows:

(a) any or all of such Holder's A-1 Notes may be converted into such number of fully-paid and nonassessable shares of Conversion Preferred Stock as is equal to the quotient of (x) the principal amount of such Note together with accrued and unpaid interest on such Note to and including the Conversion Date divided by (y) the product of (i) the Conversion Price in effect at the close of business on the Conversion Date and (ii) the number of shares of Common Stock into which one share of Conversion Preferred Stock may be converted (using the then applicable conversion price and ignoring any restrictions on such convertibility) pursuant

the Certificate of Designation (the "A-1 Conversion Rate"); *provided, however*, that the A-1 Notes shall convert into shares of Common Stock at the A-2 Conversion Rate if, (i) the A-1 Holders so elect, or (ii) at the time of conversion, any shares of Conversion Preferred Stock have been converted to Common Stock pursuant to the conversion provisions contained in Section 5(a)(ii) or 5(b)(ii) of the Certificate of Designation;

(b) any and all of such Holder's A-2 Notes, if any, may be converted into such number of fully-paid and nonassessable shares of Common Stock, as is equal, to the quotient of (x) the principal amount of such Note together with accrued and unpaid interest on such Note to and including the Conversion Date divided by (y) the Conversion Price in effect at the close of business on the Conversion Date (the "A-2 Conversion Rate");

(c) the conversion right of a Holder shall be exercised by the Holder by the surrender of the Notes to be converted to Parent at any time during usual business hours at Parent's principal place of business, accompanied by written notice that the Holder elects to convert all or a portion of the Notes represented by such certificate and specifying the name or names (with address) in which a certificate or certificates for shares of Conversion Preferred Stock or Common Stock, as the case may be, are to be issued and (if so required by Parent) by a written instrument or instruments of transfer in form reasonably satisfactory to Parent duly executed by the Holder or its duly authorized attorney and transfer tax stamps or funds therefor, if required pursuant to Section 9.1(b). Immediately prior to the close of business on the Conversion Date, each converting Holder shall be deemed to be the holder of record of the shares of Conversion Preferred Stock or Common Stock, as applicable, issuable upon conversion of such Holder's Notes, notwithstanding that the share register of Parent shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Person. Immediately prior to the close of business on a Conversion Date, all rights with respect to the Notes so converted, including the rights, if any, to receive notices, shall terminate, except only the rights of Holders thereof to (i) receive certificates for the number of shares of Conversion Preferred Stock or Common Stock, as the case may be, into which such shares of Notes have been converted; and (ii) exercise the rights to which they are entitled as holders of Conversion Preferred Stock or Common Stock, as the case may be; and

(d) no fractional shares of Common Stock or Conversion Preferred Stock shall be issued upon the conversion of any A-1 Note or A-2 Note, or portion thereof, and the aggregate number of shares of Common Stock or Conversion Preferred Stock to be issued to a particular Holder shall be rounded down to the nearest whole share of Common Stock or Conversion Preferred Stock, as the case may be, and Parent shall pay in cash the Current Market Value of any fractional shares of the time when entitlement to receive such fractions is determined. Whether or not fractional shares of Common Stock or Conversion Preferred Stock would be issuable upon such conversion shall be determined on the basis of the total number of shares of Common Stock or Conversion Preferred Stock issuable to such Holder upon such conversion.

9.5 Conversion at the Option of Parent

(a) Upon the occurrence of any Trading Period after the Second Anniversary, Parent shall have the right to convert up to 95% of the original principal amount of

each of the A-1 Notes and the A-2 Notes, if any, and upon the occurrence of any Trading Period after the Third Anniversary, Parent shall have the right to convert all of the remaining principal amount of each of the A-1 Notes and the A-2 Notes, if any (each an "Optional Conversion"), at the Conversion Price plus accrued and unpaid interest

(b) If Parent shall have the right to convert Notes pursuant to Section 9.5(a), Parent shall not exercise such right unless (i) Parent has complied with Section 2.4 of the Registration Rights Agreement, (ii) if less than all of the Notes are to be converted, such conversion shall be done pro rata among the A-1 Notes and the A-2 Notes, if any, based on the aggregate outstanding principal amount thereof on the Forced Conversion Date and (iii) Parent notifies each Holder, within two Trading Days, of the completion of any Trading Period for which it elects to effect an Optional Conversion. If Parent fails to comply with the requirements of this Section 9.5(b) in connection with an Optional Conversion, Parent shall loose the right to such Optional Conversion for the instant Trading Period and shall not be able to exercise its right to effect a redemption until the next occurrence of a Trading Period (commencing no earlier than thirty days before the day immediately following completion of the preceding Trading Period).

(c) If Parent desires to exercise its conversion right pursuant to this Section 9.5, the Notes shall be converted into such number of fully paid and nonassessable shares of Conversion Preferred Stock or Common Stock, as the case may be, at the A-1 Conversion Rate and the A-2 Conversion Rate, as applicable; *provided* that the A-1 Notes shall convert into Common Stock at the A-2 Conversion Rate, if, at the time of conversion, any shares of Conversion Preferred Stock have been converted into Common Stock pursuant to the conversion provisions contained in Section 5(a)(ii) or 5(b)(ii) of the Certificate of Designation. Such conversion shall be effective immediately prior to the close of business on the Forced Conversion Date without any action by any Holder. Immediately prior to the close of business on the Forced Conversion Date, each Holder of Notes as of the close of business on such date shall be deemed to be the holder of record of the shares of Conversion Preferred Stock or Common Stock, as the case may be, issuable upon conversion of such Holder's Notes, notwithstanding that the share register of Parent shall then be closed or that certificates representing such shares of Conversion Preferred Stock or Common Stock, as the case may be, shall not then be actually delivered to such Person. At the close of business on the Forced Conversion Date, all rights with respect to the Notes so converted, including the rights, if any, to receive notices, shall terminate, except only the rights of Holders thereof to (i) receive certificates for the number of shares of Conversion Preferred Stock or Common Stock, as the case may be, into which such shares of Notes have been converted; and (ii) exercise the rights to which they are entitled as holders of Conversion Preferred Stock or Common Stock, as the case may be. No former Holder shall be entitled to receive certificates representing shares of Conversion Preferred Stock or Common Stock, as the case may be, issued pursuant to this Section 9.5, unless and until such former Holder surrenders the converted Notes to Parent at its principal executive office. Promptly following surrender of such converted Notes, Parent shall issue certificates representing the shares of Conversion Preferred Stock or Common Stock, as the case may be, into which such surrendered Note was converted registered in the name of the former Holder of such Note or such other Person as such former Holder shall specify, so long as such former Holder has complied with the transfer procedures set forth in Section 9.1(b).

9.6 Conversion Price. The Conversion Price is subject to adjustment from time to time as provided in this Section 9.6.

(a) Adjustment for Change in Capital Stock:

(i) If, after the date hereof, Parent:

(A) pays a dividend or makes a distribution on its Common Stock in shares of any of its Common Stock or Warrants, rights or options exercisable for its Common Stock, other than a dividend or distribution of the type described in Section 9.6(i);

(B) pays a dividend or makes a distribution on its Common Stock in shares of any of its Capital Stock, other than Common Stock or rights, warrants or options exercisable for its Common Stock and other than a dividend or distribution of the type of described in Section 9.6(i); or

(C) subdivides any of its outstanding shares of Common Stock into a greater number of shares; or

(D) combines any of its outstanding shares of Common Stock into a smaller number of shares; or

(E) issues by reclassification of any of its Common Stock any shares of any of its Capital Stock;

then the Conversion Price in effect immediately prior to such action shall be adjusted so that the Holder of Note thereafter exercised may receive the number of shares of Capital Stock of Parent which such Holder would have owned immediately following such action if such Holder had converted such Note (and any Conversion Preferred Stock issuable upon such conversion, if applicable) immediately prior to such action or immediately prior to the record date applicable thereto, if any (regardless of whether the Notes or Preferred Stock are then convertible).

(ii) The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification. If such dividend or distribution is not so paid or made or such subdivision, combination or reclassification is not effected, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such record date or effective date had not been so fixed.

(iii) If after an adjustment a Holder upon conversion of a Note may receive shares of two or more classes of Capital Stock of Parent, the Conversion Price shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class of Capital Stock as is contemplated by this Section 9.6(a) with

respect to the Common Stock, on terms comparable to those applicable to Common Stock in this Section 9.6.

(b) Adjustment for Sale of Common Stock Below Conversion Price:

(i) If, after the date hereof, Parent grants or sells any Common Stock or any securities convertible into or exchangeable or exercisable for any Common Stock at a price below the then applicable Conversion Price (a "Dilutive Issuance") other than:

(A) securities issued pursuant to an equity incentive plan of Parent to Parent's or its Subsidiaries' employees, directors, or other individuals who provide services to Parent or its Subsidiaries, as approved by Parent's board of directors;

(B) securities issued by Parent in connection with a *bona fide* business acquisition by Parent approved by Parent's board of directors;

(C) securities issued or issuable pursuant to strategic transactions with Parent's customers entered into by Parent for primarily non-equity financing purposes approved by Parent's board of directors;

(D) securities issued in connection with Parent's repurchase of the Senior Notes;

(E) Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the date of this Agreement;

(F) Common Stock issued or issuable upon (i) conversion of the Notes to Conversion Preferred Stock or Common Stock, (ii) exercise of Warrants for shares of Common Stock or Conversion Preferred Stock (including the Change in Control Warrants) or (iii) conversion of Series A Preferred to Common Stock; or

(G) Common Stock issued or issuable in connection with the Merger or the Stock Purchase (each an "Excluded Conversion Adjustment"),

the Conversion Price shall be adjusted in accordance with the formula:

$$CP' = CP\frac{(CS+(AC/CP))}{CS+AS}$$

CP' = The adjusted Conversion Price;

CP = The Conversion Price prior to the Dilutive Issuance;

AC= Aggregate consideration paid for the securities issued in the Dilutive Issuance;

AS = Number of shares of securities (on as-converted basis) issued in the Dilutive Issuance.

CS = Common Stock outstanding immediately prior to the Dilutive Issuance ("Common Stock Outstanding") shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of all outstanding Preferred Stock, (3) Common Stock issuable, assuming a net exercise, upon exercise of all stock options outstanding on the Closing Date with an exercise price equal to or less than $2.00 per share, (4) Common Stock issuable upon exercise of options issued after the Closing Date for which the exercise price equals or exceeds the Current Market Value of the Common Stock on the date of issuance of such options, (5) Common Stock issuable, assuming a net exercise, upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of all warrants outstanding (or issuable pursuant to this Agreement) on the Closing Date with a strike price per share equal to or less than $2.00 per share, and (6) Common Stock issuable upon exercise of warrants issued after the Closing Date for which the exercise price equals or exceeds the Current Market Value of the Common Stock on the date of issuance of such warrants. Notwithstanding the foregoing, Common Stock Outstanding shall exclude Warrant Shares and shares of Conversion Preferred Stock or Common Stock issuable upon conversion of the Notes. Shares described in (1) through (6) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable); and

(ii) The adjustment shall become effective immediately after the Dilutive Issuance.

(iii) In the case of the issuance of a Dilutive Issuance for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by Parent for any underwriting or otherwise in connection with the issuance and sale thereof.

(iv) In the case of a Dilutive Issuance for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(v) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefore:

(A) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without

limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 9.6(b)(iii) and 9.6(b)(iv)), if any, received by Parent upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential anti-dilution adjustments) for the Common Stock covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by Parent (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 9.6(b)(i) and 9.6(b)(v)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(D) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(E) The number of shares deemed issued and the consideration deemed paid therefor in the Dilutive Issuance pursuant to Sections 9.6(b)(v)(A) and 9.6(b)(v)(B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 9.6(b)(v)(C) or 9.6(b)(v)(D).

(iv) No adjustment shall be made under this Section 9.6(b) for any adjustment which is the subject of Section 9.6(a).

(c) Whenever the Conversion Price is adjusted, Parent shall promptly mail to Holders of Notes then outstanding at the addresses appearing on the Notes register maintained pursuant to Section 9.1(a) a notice of the adjustment. Parent shall obtain a certificate from Parent's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct.

(d) If Parent consummates a Fundamental Transaction, as a condition to consummating any such transaction the Person formed by or surviving any such consolidation or merger if other than Parent or the Person to whom such transfer has been made (the "Surviving Person") shall assume the obligations under the Notes and issue to each Holder an assumption agreement. The assumption agreement shall provide (i) that the holder of a Note then outstanding may convert it for the kind and amount of securities, cash or other assets which such holder would have received immediately after the Fundamental Transaction if such holder had converted such Note immediately before the effective date of the transaction, assuming (to the extent applicable) that such holder (A) was not a constituent Person or an affiliate of a constituent Person to such transaction, (B) made no election with respect thereto, and (C) was treated alike with the plurality of non-electing holders, and (ii) that the Surviving Person shall succeed to and be substituted to every obligation of Parent in respect of this Agreement and the Notes. The assumption agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 9.6. The Surviving Person shall mail to Holders at the addresses appearing on the Notes register

maintained pursuant to Section 9.1(a) a notice briefly describing the assumption agreement. If the issuer of securities deliverable upon exercise of Notes is an affiliate of the Surviving Person, that issuer shall join in such agreement.

(e) Parent shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Conversion Preferred Stock and Common Stock, as applicable, or shares of Conversion Preferred Stock or Common Stock held in the treasury of Parent, for the purpose of effecting the conversion of the Notes, the full number of shares of Conversion Preferred Stock and Common Stock, as applicable, then deliverable upon the conversion of all Notes then outstanding, and the shares so deliverable shall be fully paid and nonassessable and free from all Liens.

(f) After an adjustment to the Conversion Price under this Section 9.6, any subsequent event requiring an adjustment under this Section 9.6 shall cause an adjustment to the Conversion Price as so adjusted.

(g) No Adjustment in the Conversion Price need be made unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustments. All adjustments to the Conversion Price calculated under this Section 9.6 shall be made to the nearest 1/1,000th of a share.

(h) Parent shall not be required to issue fractional shares upon conversion of the Notes or distribute share certificates that evidence fractional shares. In lieu of fractional shares, there shall be paid to the former Holders an amount in cash equal to the same fraction of the Current Market Value, per share on the Business Day preceding the Conversion Date or Forced Conversion Date, as applicable. Such payments shall be made by check. If any Holder surrenders for conversion more than one Note, the number of shares deliverable to such holder may, at the option of Parent, be computed on the basis of the aggregate amount of all the Notes exercised by such Holder.

(i) If at any time Parent grants, issues or sells options, convertible securities, or rights to purchase stock, warrants or other securities pro rata to the record holders of any Common Stock ("Distribution Rights") or, without duplication, makes any dividend or otherwise makes any distribution, including, subject to applicable law, pursuant to any plan of liquidation ("Distribution") on the Common Stock, then Parent shall grant, issue, sell or make to each Holder of Notes then outstanding, the aggregate Distribution Rights or Distribution, as the case may be, which such holder would have acquired if such holder had held the maximum number of shares acquirable upon complete conversion of such Holder's Notes (regardless of whether the Notes are then exercisable) immediately before the record date for the grant, issuance or sale of such Distribution Rights or Distribution, as the case may be, or, if there is no such record date, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Distribution Rights or Distribution, as the case may be.

9.7 Change in Control

(a) If a Change in Control occurs, each Holder shall have the right, at such Holder's option, subject to the terms and conditions of this Agreement, to require Parent to repurchase all or any part of such Holder's Notes at a cash price (the "Change in Control Payment") equal to the principal amount of such Note, plus accrued and unpaid interest, if any, to and including the date the Notes tendered are purchased and paid for in accordance with this Section 9.7 (the "Change in Control Payment Date").

(b) If a Change in Control occurs, Parent shall be required to commence an offer to purchase Securities (a "Change in Control Offer"), as follows:

(i) the Change in Control Offer shall commence within ten Business Days following the Change in Control date;

(ii) the Change in Control Offer shall remain open for at least twenty Business Days, except to the extent that a longer period is required by applicable law, but in any case not more than ninety Business Days after the occurrence of the Change in Control (or not more than 120 days of the Change in Control if, during any such extension beyond ninety days following the Change in Control, Parent is diligently pursuing all commercially reasonable steps to consummate the Change in Control Offer as promptly as practicable); and

(iii) on or before the commencement of any Change in Control Offer, Parent shall send a notice to each of the Holders which shall (to the extent consistent with this Agreement) govern the terms of the Change in Control Offer and shall state:

(A) that the Change in Control Offer is being made pursuant to such notice and this Section 9.7 and that all Notes, or portions thereof, tendered shall be accepted for payment;

(B) the amount of accrued and unpaid interest as of the then applicable Change in Control Payment Date, the then applicable Change in Control Payment Date and the Change in Control Put Date (as defined below);

(C) that any Note, or portion thereof, not tendered or accepted for payment or converted by Parent shall continue to accrue interest;

(D) that, unless Parent defaults in depositing cash with the paying agent in accordance with Section 9.7(d) or such payment is prevented, any Note, or portion thereof, accepted for payment pursuant to the Change in Control Offer shall cease to accrue interest after the Change in Control Payment Date;

(E) that Holders electing to have a Note, or portion thereof, purchased pursuant to a Change in Control Offer shall be required to surrender the Note, with the form entitled

"Option of Holder to Elect to Have Notes Purchase" on the reverse of the Note completed, to the paying agent (which may not be Parent or any affiliate of Parent) at the address specified in the notice prior to the close of business on the earlier of (a) the third Business Day prior to the Change in Control Payment Date and (b) the third Business Day following the expiration of the Change in Control Offer (such earlier date being the "Change in Control Put Date");

(F) that Holders shall be entitled to withdraw their election, in whole or in part, if the paying agent (which may not be Parent or any affiliate of Parent) receives, prior to the time of payment of the Change of Control Payment by the paying agent on the Change in Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Notes such Holder is withdrawing and a statement that such Holder is withdrawing his, her or its election to have such principal amount of Notes purchased;

(G) that Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered; and

(H) a brief description of the events resulting in such Change in Control.

(c) Any such Change in Control Offer shall comply with all applicable provisions of Federal and state laws, including those regulating tender offers, if applicable, and any provisions of this Agreement which conflict with such laws shall be deemed to be superseded by the provisions of such laws.

(d) On or before the Change in Control Payment Date, Parent shall (i) accept for payment Notes or portions thereof properly tendered pursuant to the Change in Control Offer on or before the Change in Control Put Date and (ii) deposit with the paying agent cash sufficient to pay the Change in Control Payment (including accrued and unpaid interest) for all Notes or portions thereof so tendered. The paying agent shall on the Change in Control Payment Date mail to Holders of Notes so accepted payment in an amount equal to the Change in Control Payment for such Notes, and Parent shall promptly issue and mail or deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered. Parent shall not have any obligation to accept for payment or pay for any Notes tendered by a Holder after the Change in Control Put Date. Any Note not so accepted shall be promptly mailed or delivered by Parent to the Holder thereof.

9.8 Payment of Interest in Kind. Interest payments on the Notes may not be paid in cash. Parent shall, on each interest payment date, issue and sell, to each Holder, Notes identical on terms to the Notes held by such Holder (the "PIK Notes") in an aggregate principal

amount equal to $1,000 times the next lowest integer to the quotient of (a) the interest accrued and unpaid on all Notes owned by such Holder as of such interest payment date divided by (b) $1,000. PIK Notes may be denominated in aggregate principal amounts of less than $1,000. Each PIK Note shall be dated such interest payment date and registered in the name of the Holder of the Note with respect to which such PIK Note relates. Such PIK Note shall accrue interest, payable in additional PIK Notes, from and after its date of issue.

9.9 Transfer Restrictions.

(a) During the period commencing on the Closing Date and ending on the 180th day following the Closing Date (the "Transfer Restriction Period"), the Notes (or any shares of Common Stock or Conversion Preferred Stock acquired upon conversion of the Notes) shall not be Transferred.

(b) During the Transfer Restriction Period, the Warrants (or any shares of Common Stock or Conversion Preferred Stock acquired upon exercise of the Warrants) shall not be Transferable.

(c) After the expiration of the Transfer Restriction Period, each Purchaser covenants that it shall not Transfer the Notes (or any shares of Common Stock or Conversion Preferred Stock acquired upon conversion of the Notes) to any Person except pursuant to an effective registration under the Securities Act or in a transaction which, in the opinion of counsel reasonably satisfactory to Parent, qualifies as an exempt transaction under the Securities Act and the rules and regulations promulgated thereunder.

(d) The Notes and the certificates evidencing the shares of Conversion Preferred Stock or Common Stock, as the case may be, issuable upon conversion of the Notes shall bear the following legend reflecting the foregoing restrictions on the transfer of such securities:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO EQUINIX, INC., QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER."

"THE SECURITIES EVIDENCED HEREBY MAY NOT BE TRANSFERRED (AS SUCH TERM IS DEFINED IN THAT SECURITIES PURCHASE AGREEMENT, DATED AS OF OCTOBER 2, 2002 (THE "PURCHASE AGREEMENT"), BY AND AMONG EQUINIX, INC., A DELAWARE

CORPORATION (“PARENT”), THE GUARANTORS THERETO, AND THE PURCHASERS NAMED IN SCHEDULE 1 AND SCHEDULE 2 THERETO)) DURING THE PERIOD BEGINNING ON THE CLOSING DATE AND CONTINUING TO THE DATE THAT IS 180 DAYS FOLLOWING THE CLOSING DATE (AS SUCH TERM IS DEFINED IN THE AGREEMENT), EXCEPT AS PERMITTED UNDER THE PURCHASE AGREEMENT. A COPY OF THE AGREEMENT HAS BEEN FILED WITH THE SECRETARY OF PARENT AND IS AVAILABLE UPON REQUEST.”

Parent shall remove the securities legend from the Notes and the certificates evidencing such shares of Common Stock and Conversion Preferred Stock as promptly as practicable following the registration of such securities under the Securities Act or such earlier time as such securities are no longer subject to restriction on transfer under the Securities Act. The Transfer Restriction Period legend shall be removed at the request of a Holder following the lapse of such restriction

(e) In addition, the shares of Conversion Preferred Stock or Common Stock issuable upon conversion of the A-1 Notes shall bear the legend described in Section 1B.04(b) of the Combination Agreement and Section 6.2 of the Governance Agreement.

(f) Notwithstanding the restrictions and requirements set forth elsewhere in this Agreement, Holders shall have the right to Transfer all or a portion of the Securities owned by such Holder, so long as:

(i) The Holder shall give prompt notice of such Transfer to Parent and shall provide Parent, at least fifteen days before such Transfer, an executed copy of the agreement pursuant to which such Transfer was executed and a written opinion of counsel reasonably acceptable to Parent indicating such Transfer will be exempt from registration under the Securities Act;

(ii) The transferee makes representations and warranties to Parent substantially identical to those set forth in Section 4 of this Agreement; and

(iii) The transferee agrees to be bound by the terms and conditions contained in this Agreement and shall be treated as a “Holder” for all purposes hereof.

9.10 Security; Intercreditor Agreement.

(a) The Notes shall constitute senior indebtedness of Parent, secured by Liens junior to the Liens securing Parent’s obligations under the Credit Agreement. The A-1 Notes and the A-2 Notes, if any, shall be of equal rank and be treated *pari passu* in all respects except for the security for such Notes.

(b) Section 9.10(a) notwithstanding, the A-1 Notes shall be secured by (i) First Priority security interests in all of the A-1 Assets and all after acquired property of the Asian Subsidiaries and (ii) Second Priority security interests in all of the assets of Parent and each of its Restricted Subsidiaries (except for the Asian Subsidiaries).

(c) Section 9.10(a) notwithstanding, the A-2 Notes, if any, shall be secured by Second Priority security interests in all of the assets of Parent and each of its Restricted Subsidiaries (except for the Asian Subsidiaries) that shall be of *pari passu* priority with the Liens described in Section 9.10(b)(ii).

(d) Except as provided in Section 8(a)(xv), Parent shall not incur, permit or suffer to exist any Lien on the Asian Assets.

10. Termination.

10.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Parent and the Requisite Holders;

(b) by Parent or the Requisite Holders, in the event that a Governmental Entity shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the Parties shall use their reasonable best efforts to lift), which permanently restrains, enjoins or otherwise prohibits the transactions contemplated by this Agreement and which is not subject to appeal; or

(c) by Parent or the Requisite Holders, if the Combination Agreement has been terminated in accordance with its terms.

10.2 Effect of Termination. If this Agreement is terminated or abandoned pursuant to Section 10.1, written notice thereof shall forthwith be given to each of the Parties and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by Parent or the Purchasers. If this Agreement is terminated as provided herein, no Party shall have any liability or further obligation to any other Party; *provided, however*, that no termination of this Agreement pursuant to this Section 10 shall relieve any Party of liability for a grossly negligent or willful and, in either case, material breach of any provision of this Agreement occurring before such termination.

11. Miscellaneous.

11.1 Entire Agreement. This Agreement, the Parent Disclosure Letter, the Credit Agreement, the other Financing Documents and the Combination Agreement (including the exhibits and schedules hereto and thereto) constitute the entire agreement and supersede all prior and contemporaneous agreements, negotiations, arrangements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

11.2 Expenses and Indemnities.

(a) Parent and the Existing Guarantor agree, jointly and severally, upon consummation of the transactions hereby contemplated, to pay the reasonable legal fees of

the Purchasers' special counsel incurred in connection with the negotiation, preparation and execution of this Agreement, the other Financing Documents, and the respective Offered Securities being acquired by Purchaser, but in no event more than $125,000 for counsel to the A-2 Purchasers and $75,000 for counsel to the A-1 Purchaser.

(b) Following the Closing, Parent and each Guarantor, jointly and severally, agree to pay, and defend and save Purchasers harmless against liability for the payment of, all reasonable actual out-of-pocket expenses (including reasonable attorneys fees), in each case upon the presentation of reasonably detailed statements, incurred with respect to the enforcement, attempted enforcement, or workout of any provision of this Agreement, the Offered Securities, or any of the other Financing Documents, or any amendments or waivers requested by Parent or any Guarantor (whether the same become effective) under or in respect of any such agreement or instrument, and all expenses incurred in connection with the preparation of such agreements and instruments and all transfer taxes which may be payable in respect of the execution and delivery of such agreements or instruments, or the issuance, delivery, or purchase by Purchaser of any Offered Securities, and the reasonable fees and expenses of special counsel to Purchasers retained in connection with such agreements and instruments, and the transactions hereby and thereby contemplated, including the enforcement of any provision hereof or thereof, and any such amendments or waivers and the costs and expenses of Purchasers incurred in connection with any aspect of any bankruptcy case of Parent, a Guarantor or any of their respective Subsidiaries, whether voluntary or involuntary, and whether seeking reorganization or liquidation.

(c) Unless otherwise specifically provided herein, any and all payments by Parent under this Agreement or under the Notes shall be made net of any and all present or future taxes, levies, deductions, or withholdings, additions to tax, interest, penalties and all other liabilities with respect thereto, excluding net income, franchise or similar taxes imposed or levied on the Holder as a result of a present or former connection between the Holder and the jurisdiction of the governmental authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Holder having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement) (all such taxes, levies, deductions or withholding, etc. other than excluded taxes referred to as "Taxes"). If any Taxes are required to be withheld or deducted upon conversion of the Notes or, as a result of a change in Law occurring after the date of this Agreement, upon the issuance of any PIK Notes, the immediately preceding sentence shall be construed to mean that Parent shall issue and transfer the same number of shares of Conversion Preferred Stock or Common Stock or PIK Notes to each Holder as if no such withholding or deduction were required, but subject to the prior receipt from each Holder of an amount in cash sufficient to allow Parent to satisfy its tax withholding or other obligations with respect thereto, which amount Parent shall pay over to the relevant tax authority or other authority on a timely basis in accordance with applicable laws. Each Holder shall, severally and not jointly, indemnify Parent for the full amount of any withholding taxes imposed on any payments to such Holder made hereunder or under the Notes (including issuance of Conversion Preferred Stock or Common Stock upon conversion of the Notes) to the extent paid by Parent and not reimbursed by such Holder and any penalties and interest and reasonable expenses arising therefrom or with respect thereto (but only to the extent such penalties, interest and expenses were incurred due to such Holder's failure to provide the relevant tax amount in a timely manner).

(d) Parent and each Guarantor further agree, jointly and severally, to indemnify, defend, and save harmless each Purchaser and each Holder and each of their respective officers, directors, employees, and agents from and against any and all actions, causes of action, suits, losses, liabilities, and damages, and expenses (including reasonable attorneys fees and disbursements) in connection therewith (the "Indemnified Liabilities") incurred by any Purchaser, Holder or any of their respective officers, directors, employees, or agents as a result of, or arising out of, or relating to any of the transactions contemplated hereby, other than with respect to the Combination Agreement, except for any Indemnified Liabilities arising directly and exclusively on account of the gross negligence or willful misconduct of any Purchaser, Holder or any of their respective officers, directors, employees, or agents; *provided, however*, that, if and to the extent such agreement to indemnify may be unenforceable for any reason, Parent and each Guarantor shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that shall be permissible under applicable law. In connection with any matter as to which the Purchaser, any Holder or the other above-specified indemnified parties are entitled to be indemnified hereunder, the Purchaser or the Holder shall endeavor to give written notice thereof in reasonable detail to Parent as soon as practicable, *provided* that any failure to give such notice shall not vitiate or void the indemnities provided for herein except to the extent such failure has prejudiced Parent's ability to defend against any claim causing Purchaser or Holder to seek indemnity under this Section 11. The obligations of Parent and each Guarantor under this Section 11.2(d) shall survive the transfer of any Offered Securities and payment of any Note.

(e) Section 11.2(d) notwithstanding, with respect to Environmental Claims, Parent and each Guarantor, jointly and severally, agree to defend and indemnify Purchaser and each of its directors, officers, employees, agents, and affiliates (each such Person being called an "Indemnitee") against, and agrees to hold each Indemnitee harmless from, any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including reasonable attorneys fees, charges, disbursements, consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses) of whatever kind or nature which are asserted against them in their capacities as secured or unsecured creditors of Parent or any of its Subsidiaries arising out of, or in any way relating to, the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of Parent, any Guarantor, any of their Subsidiaries or to the their past or presently owned or operated properties, or any orders, requirements, or demands of Governmental Authorities related thereto which are asserted against them in their capacities as secured or unsecured creditors of Parent or any of its Subsidiaries, except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from (i) the gross negligence or willful misconduct of the Indemnitee seeking indemnification therefor, or (ii) the actions or omissions of any Indemnitee at any time after such Indemnitee has assumed operation of or taken title to any of Parent's or any Guarantor's formerly or then currently owned or operated properties. This indemnity shall continue in full force and effect regardless of the termination of this Agreement and the other Financing Documents. The obligations of Parent and each Guarantor under this Section 11.2(e) shall survive the transfer of any Offered Securities and payment of any Note.

11.3 Amendment and Waiver. Subject to the last sentence of this Section 11.3, any term of this Agreement or the Notes may be amended and the observance of the term of this

Agreement or of the Notes may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the consent of Parent and Requisite Holders *provided* that, without the prior written consent of the Holder of each note then outstanding, no such amendment shall (a) change the maturity or the principal of, waive Parent's obligation to make a Change in Control Offer for, or reduce the rate or change the time of payment of interest on, or change the amount or time of any payment or prepayment of any principal of, such Note; (b) reduce the percentages referred to in the preceding sentence which are required to consent to any amendment or waiver; or (c) change the percentage of the principal amount of the Notes the holders of which may declare the Notes to be due and payable as provided in Section 8. No condition in Section 7.1 to a Purchaser's obligation to perform its obligations at Closing may be waived or modified without the prior written consent of such Purchaser. Any amendment or waiver effected in accordance with this Section 11.3 shall be binding upon Parent, each Guarantor, each Purchaser and each Holder of any Note then outstanding and each future Holder of any Note. Parent shall not, and shall not permit any of its Subsidiaries or affiliates to, directly or indirectly, pay or otherwise provide consideration to any Holder of any Note in connection with obtaining the consent of such Holder to any amendment, waiver, supplement or modification of or under this Agreement or the Notes unless like consideration is provided to all Holders of Notes pro rata in proportion to the respective principal amounts held by such Holders whether or not they give such consent.

11.4 Survival of Representations and Warranties. All representations and warranties contained in this Agreement or made in writing by Parent, any Guarantor or any Purchaser shall survive the Closing and the purchase and sale of the Offered Securities, the transfer by any Purchaser of any Offered Securities or portion thereof or interest therein and the payment of any Note, and may be relied upon by Purchaser or any transferee of an Offered Security or Parent, as applicable, regardless of any investigation made at any time by or on behalf of a Purchaser or any transferee of an Offered Security or Parent, as applicable; *provided, however*, that any transferee of an Offered Security shall be bound by all waivers or other actions taken by its transferor prior to the date of such transfer.

11.5 Disclosure to Other Persons

(a) Parent and each Guarantor acknowledge that the representative on Parent board of directors (elected pursuant to the Governance Agreement) of any Holder may deliver copies of any financial statements and other documents delivered to such Person, and disclose any other information disclosed to such Person (other than privileged documents or information that are expressly identified as such), by or on behalf of Parent or any Guarantor to (i) such Holder's directors, officers, members, partners, employees, agents, and professional consultants, (ii) any other Holder of any Offered Securities, (iii), subject to the prior written approval of Parent (which shall not be unreasonably withheld, conditioned or delayed), any Person to which such Holder offers to sell such Offered Securities or any part thereof, so long as such potential purchaser agrees, in writing, to preserve the confidentiality of such information (except that such potential purchaser may disclose such information in accordance with this Section 11.5); *provided, however*, that such disclosure shall not be made to any potential purchaser which is known to be a direct competitor, or an affiliate of a direct competitor, of Parent or any of its Subsidiaries without the prior written consent of Parent, (iv) any federal or state regulatory authority having jurisdiction over such Holder, (v) the National Association of

Insurance Commissioners or any similar organization, or (vi) any other Person to which such delivery or disclosure may be necessary or advisable to avoid material prejudice, (x) in compliance with any law, rule, regulation, or order applicable to such Holder, (y) in response to any subpoena or other legal process, or (z) in connection with any litigation to which such Holder is a party. Nothing is this Section 11.5 shall be construed to create or give rise to any fiduciary duty on the part of any Purchaser or Holder to Parent or any Subsidiary.

(b) Each Purchaser (which term shall, for the purpose of this Section 11.5(b), include each Holder) agrees to keep confidential any information delivered by Parent hereunder and to use such information solely for the purpose of monitoring its investment in Parent and not otherwise for its benefit or for the benefit of any third party; *provided, however*, that subject to the provisos contained in this Section 11.5, nothing herein shall prevent any Purchaser from disclosing such information: (i) to any Purchaser, (ii) to any affiliate of, or investor in, any Purchaser or, any actual or potential purchaser, participant, assignee, or transferee of any Purchaser's rights under any Note that agrees to be bound by this Section 11.5, (iii) upon order of any court or administrative agency, (iv) upon the request or demand of any regulatory agency or authority having jurisdiction over such party, (v) which has been publicly disclosed, (vi) which has been obtained from any Person that is not a Party or an affiliate of any such party, unless such Purchaser knows that such information is required by such Person to be kept confidential, (vii) in connection with the exercise of any remedy hereunder, (viii) to the independent and certified public accountants for any Purchaser, (ix) as otherwise expressly contemplated by this Agreement, (x) to counsel for and other advisors, accountants, and auditors to any Purchaser, or (xi) as may be required by statute, decision, or judicial or administrative order, rule, or regulation. Each Purchaser hereby acknowledges that it is aware, and that it shall ensure that each of its representatives who receives confidential information is aware that the United States securities laws prohibit any Person who has received from an issuer material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other Person under circumstances in which it is reasonably foreseeable that such Person is likely to purchase or sell such securities.

11.6 Satisfaction of Closing Conditions. Parent, each Existing Guarantor and each Purchaser shall use commercially reasonable efforts to satisfy, or cause to be satisfied, the conditions to its and each Party's obligations to consummate the transaction contemplated hereby which are set forth in Section 7.

11.7 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed) or sent by an internationally recognized overnight courier service, such as Federal Express, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

if to any Purchaser, to the address specified on such Purchaser's signature page to this Agreement:

with, in the case of the A-1 Purchaser, a copy (which shall not constitute notice) to:

Latham & Watkins
135 Commonwealth Drive
Menlo Park, California 94025
Attention: Robert A. Koenig
Telephone No.: (650) 328-4600
Telecopy No.: (650) 463-2600

with, in the case of the A-2 Purchasers, if any,, a copy (which shall not constitute notice) to:

Brobeck, Phleger & Harrison LLP
550 South Hope Street, Suite 2100
Los Angeles, California 90071
Attention: Richard S.O. Chernicoff
Telephone No.: (213) 239-1266
Telecopy No.: (213) 745-3345

if to Parent or any Guarantor:

Equinix, Inc.
2450 Bayshore Parkway
Mountain View, California 94043
Attention: Chief Financial Officer
Telephone No.: (650) 316-6000
Telecopy No.: (650) 316-6900

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher
787 Seventh Avenue
New York, New York 10019
Attention: Cornelius T. Finnegan III
Telephone No.: (212) 728-8000
Telecopy No.: (212) 728-8111

11.8 Descriptive Headings. The descriptive headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect or be used to construe the meaning of this Agreement.

11.9 Satisfaction Requirement. If any agreement, certificate, or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to any Party, the determination of such satisfaction shall be made by such Party in its sole and exclusive judgment exercised in good faith.

11.10 Severability. Any term or provision of this Agreement that is held to be invalid, void or unenforceable shall not affect the validity or enforceability of the remaining

terms and provisions of this Agreement. If any term or provision of this Agreement is invalid, void or unenforceable, the parties agree that an arbitrator shall have the power to and shall, subject to such arbitrator's discretion, reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

11.11 Governing Law. This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York (including Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York).

11.12 Arbitration.

(a) All disputes, controversies or claims (whether in contract, tort or otherwise) arising out of, relating to or otherwise by virtue of, this Agreement, breach of this Agreement or the transactions contemplated by this Agreement shall be finally settled under the Rules of Arbitration (except as set forth below) of the London Court of International Arbitration (as amended from time to time, the "LCIA Rules"). EACH PARTY ACKNOWLEDGES THAT IT IS WAIVING ANY RIGHTS IT MAY HAVE TO TRIAL BY JURY.

(b) The arbitration shall be seated in London, England, in the English language and shall be the exclusive forum for resolving such disputes, controversies or claims. The arbitrator shall have the power to order hearings and meetings to be held in such place or places as he or she deems in the interests of reducing the total cost to the parties of the arbitration.

(c) The arbitration shall be held in before a single arbitrator. Each party to the arbitration shall submit a list of three proposed arbitrators, who each meet the criteria set forth in Section 11.11(d) within ten Business Days of service of the request for arbitration on the last respondent. The LCIA Court (as referred to in the LCIA Rules) shall select from among such nominations, with any person nominated by more than one party to the arbitration being per se the nominee of each party.

(d) The arbitrator shall have practiced the field of law that is principally the subject of such dispute, controversy or claim in the State of New York for at least ten years. The arbitrator may be of the same nationality as any party. The arbitrator shall have the power to order equitable remedies and not just the payment of monies. Notwithstanding the LCIA Rules, no party shall have the right to seek a court order of interim or conservatory measures, other than a court order confirming and enforcing an arbitral award of interim or conservatory measures. The arbitrator may hear and rule on dispositive motions as part of the arbitration proceeding (e.g. motions for judgment on the pleadings, summary judgment and partial summary judgment).

(e) All timetables and deadlines for the conduct of the arbitration shall be set in accordance with the Federal Rules of Civil Procedures (and any applicable local rules) as then interpreted and applicable in the Court of Appeals for the Second Circuit and the United

States District Court of and for the Southern District of New York. The Arbitrator shall not have the power to abridge such time requirements.

(f) Discovery shall be permitted to the extent, and under the conditions, then in effect under the Federal Rules of Civil Procedure of the United States as then interpreted and construed by the Court of Appeals for the Second Circuit and the United States District Court of and for the Southern District of New York. The arbitrator may appoint an expert only with the consent of all of the parties to the arbitration. Testimony of witnesses may be challenged to the extent, and under the conditions, then in effect under the Federal Rules of Evidence of the United States as interpreted and construed by the Court of Appeals for the Second Circuit and the United States District Court of and for the Southern District of New York.

(g) All deposits required under the LCIA Rules shall be paid equally by all parties to the arbitration. Each party shall to the arbitration shall pay its own costs and expenses (including, but not limited to, attorney's fees) in connection with the arbitration.

(h) The award rendered by the arbitrator shall be executory, final and binding on the parties. The award rendered by the arbitrator may be entered into any court having jurisdiction (including, the courts of the State of New York), or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be. Such court proceeding shall disclose only the minimum amount of information concerning the arbitration as is required to obtain such acceptance or order.

(i) Except as required by law, no Party nor the arbitrator may disclose the existence, content or results of an arbitration brought pursuant to this Agreement.

11.13 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER FINANCING DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE CREDITOR/DEBTOR RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATION SHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH SHALL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN

WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 11.12 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

11.14 No Assignment. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns, in particular, shall inure to the benefit of, and be enforceable by, any transferee of any Offered Security. The rights and obligations of Parent and the Guarantors under this Agreement and the Offered Securities may not be assigned (by operation of law or otherwise) or delegated without the consent of Requisite Holders.

11.15 Counterparts. This Agreement may be executed in one or more counterparts (whether delivered by facsimile or otherwise), each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

11.16 Maximum Interest Rate. No provisions of this Agreement or any Note shall require the payment or the collection of interest in excess of the maximum amount permitted by applicable law. If any excess of interest in such respect is hereby provided for, or shall be adjudicated to be so provided, in this Agreement or any Note or otherwise in connection with the transactions contemplated hereby and thereby, the provisions of this Section shall govern and prevail and Parent shall not be obligated to pay the excess amount of such interest or any other excess sum paid for the use, forbearance, or detention of sums loaned pursuant hereto. In the event any Holder ever receives, collects, or applies as interest any such sum, such amount which would be in excess of the maximum amount permitted by applicable law shall be applied as a payment and reduction of the principal amount of Notes has been paid in full, any remaining excess shall forthwith be paid to Parent. In determining whether or not the interest paid or payable exceeds the maximum rate, Parent and the Holders shall, to the extent permitted by applicable law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the entire contemplated term of the indebtedness evidenced by the Notes so that interest for the entire term does not exceed the maximum rate.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

PURCHASERS:

STT COMMUNICATIONS LTD

By: /S/ JEAN MANDEVILLE

Name: Jean Mandeville
Title: Chief Financial Officer

Schedule 1

A-1 Purchaser

Purchaser	Aggregate Principal Amount of A-1 Notes	Percentage of Reorganized Capitalization Represented by Preferred Warrants[1]	Purchase Price
STT Communications	$30,000,000	_____%	$40,000,000

[1] To be determined in accordance with Section 2.3(a).

Schedule 2

A-2 Purchasers

Purchaser	Aggregate Principal Amount of A-2 Notes	Percentage of Reorganized Capitalization Represented by Common Warrant[1]	Purchase Price
_____	_____	_____%	$_____
_____	_____	_____%	$_____
_____	_____	_____%	$_____
_____	_____	_____%	$_____
Total Series A-2	_____	_____%	$_____

[1] To be determined in accordance with Section 2.3(a).

Exhibit 10.77

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE PARENT, QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

THE SECURITIES EVIDENCED HEREBY MAY NOT BE TRANSFERRED (AS SUCH TERM IS DEFINED IN THAT SECURITIES PURCHASE AGREEMENT, DATED AS OF OCTOBER 2, 2002 (THE "PURCHASE AGREEMENT"), BY AND AMONG EQUINIX, INC., A DELAWARE CORPORATION ("PARENT"), THE GUARANTORS THERETO, AND THE PURCHASERS NAMED IN SCHEDULE 1 AND SCHEDULE 2 THERETO)) DURING THE PERIOD BEGINNING ON THE CLOSING DATE (AS SUCH TERM IS DEFINED IN THE PURCHASE AGREEMENT) AND CONTINUING TO THE DATE THAT IS 180 DAYS FOLLOWING THE CLOSING DATE, EXCEPT AS PERMITTED UNDER THE PURCHASE AGREEMENT. A COPY OF THE PURCHASE AGREEMENT HAS BEEN FILED WITH THE SECRETARY OF PARENT AND IS AVAILABLE UPON REQUEST.

THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE ISSUE DATE OF THIS NOTE WAS DECEMBER 31, 2002. INFORMATION REGARDING THE ISSUE PRICE, THE TOTAL AMOUNT OF OID, AND THE YIELD TO MATURITY MAY BE OBTAINED BY WRITTEN REQUEST OF THE HOLDER OF THIS NOTE TO THE SECRETARY OF PARENT.

EQUINIX, INC.

14% SERIES A-1 CONVERTIBLE SECURED NOTE DUE 2007

Security No. CSN-1 DECEMBER 31, 2002

FOR VALUE RECEIVED, Equinix, Inc., a Delaware corporation ("Parent") hereby promises to pay to i-STT Investments Pte Ltd, or registered assigns ("Holder"), the principal amount of $30 million on November 1, 2007, with interest at the rate of fourteen percent per annum (computed on the basis of a 360 day year for actual days elapsed) payable in PIK Notes semi annually in arrears on each May 1 and November 1 commencing on May 1, 2003, on the unpaid principal balance hereof from and including the date hereof until the entire principal balance hereof and all accrued interest hereunder is paid in full.

This Note is one of the Notes issued pursuant to a Securities Purchase Agreement, dated as of October 2, 2002 (the "Purchase Agreement"), by and among Parent, the Existing Guarantors named therein and the Purchasers named therein and is entitled to the benefits of the Purchase Agreement. Reference hereby is made to the Purchase Agreement for a statement of each of such terms and conditions, and each of the terms and conditions of the Purchase Agreement are incorporated herein by this reference. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.

Any payments that fall due hereunder on a day that is not a Business Day shall be payable on the first succeeding Business Day and such extension of time shall be included in the computation of interest due hereunder. If any amount of principal hereof or interest thereon or any other

amount payable hereunder or under the Purchase Agreement, shall not be paid in full when due and in the manner provided herein (whether at the stated maturity, by acceleration or otherwise), Parent shall pay interest (after as well as before entry of judgement thereon to the extent permitted by law) on such unpaid amount to Holder, from the date such amount becomes due until the date such amount is paid in full, payable on demand of Holder, at a rate per annum equal, at all times, to fourteen percent (computed on the basis of a 360 day year for the actual number of days elapsed).

This Note is convertible, at the option of Holder, on the terms and subject to the conditions set forth in the Purchase Agreement, into shares of Parent's Series A Preferred Stock, par value $0.001 per share, or Series A-1 Preferred Stock, par value $0.001 per share.

This Note is convertible, at the option of Parent, on the terms and subject to the satisfaction of the conditions set forth in the Purchase Agreement, into shares of the Parent's Series A Preferred Stock, par value $0.001 per share, or Series A-1 Preferred Stock, par value $0.001 per share.

Upon the occurrence of a Change in Control, Parent is obligated to offer to purchase all of the Notes at the prices and on the terms specified in the Purchase Agreement.

This Note is not subject to prepayment.

This Note is equally and ratably secured by the Collateral Documents, except as provided therein. Reference is made to the full text of the Collateral Documents for the nature and extent of the security interest created thereby and the terms and conditions upon which such security interest may be released.

The payment of all principal of, premium (if any) and interest on this Note and the other Notes has been unconditionally guaranteed by Subsidiaries of Parent pursuant to separate and several Guarantees. Reference is made to the full text of such Guarantees.

If an Event of Default shall occur and be continuing, the principal of this Note may be declared or otherwise become due and payable in the manner and with the effect provided in the Purchase Agreement

This Note is a registered Note and, as provided in the Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered Holder or such registered Holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of the transferee. Prior to due presentment for registration of transfer, Parent may treat the Person in whose name this Note is registered as the owner of this Note for the purpose of receiving payment and for all other purposes. Parent will not be affected by any notice to the contrary.

This Note is governed by and shall be construed in accordance with the laws of the Sate of New York, including Section 5-1402 of the New York General Obligations Law. The Holder of this Note, by acceptance of this Note, waives any right to trial by jury and agrees that any action arising out of, related to or otherwise by virtue of this Note will be determined only by arbitration as provided in the Purchase Agreement.

IN WITNESS WHEREOF, Parent has caused this Note to be signed by its duly authorized officer as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

OPTION OF HOLDER TO ELECT TO HAVE NOTES PURCHASED

If you want to have this Note purchased by Parent pursuant to the Change in Control Offer made pursuant to Section 9.7 of the Purchase Agreement, check the following box: ☐

If you wish to have only part of your Note purchased by Parent pursuant to the Change of Control Offer made pursuant to Section 9.7 of the Purchase Agreement, state the aggregate principal amount you want to be purchased: $ _____

Date: _____ Signature: _____

Title:

(Sign exactly as your name appears on the face of this security. If you are a corporate officer, please provide appropriate evidence of authority).

FORM OF ASSIGNMENT

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED NOTE

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ all rights of the undersigned under and pursuant to the attached Note, and the undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Note on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Note in every particular, without alteration or enlargement or any change whatsoever.

Exhibit 10.78

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE PARENT, QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

THE SECURITIES EVIDENCED HEREBY MAY NOT BE TRANSFERRED (AS SUCH TERM IS DEFINED IN THAT SECURITIES PURCHASE AGREEMENT, DATED AS OF OCTOBER 2, 2002 (THE "AGREEMENT"), BY AND AMONG EQUINIX, INC., A DELAWARE CORPORATION ("PARENT"), THE GUARANTORS THERETO, AND THE PURCHASERS NAMED IN SCHEDULE 1 AND SCHEDULE 2 THERETO)) DURING THE PERIOD BEGINNING ON THE CLOSING DATE (AS SUCH TERM IS DEFINED IN THE AGREEMENT) AND CONTINUING TO THE DATE THAT IS 180 DAYS FOLLOWING THE CLOSING DATE, EXCEPT AS PERMITTED UNDER THE AGREEMENT. A COPY OF THE AGREEMENT HAS BEEN FILED WITH THE SECRETARY OF PARENT AND IS AVAILABLE UPON REQUEST.

EQUINIX, INC.

PREFERRED STOCK WARRANT

December 31, 2002

Warrant No.	PS-1
Date of Initial Issuance:	December 31, 2002
Number of Shares:	965,674
Initial Warrant Price:	$0.01
Expiration Date:	December 31, 2007

THIS CERTIFIES THAT for value received, i-STT Investments Pte Ltd, a company organized under the laws of the Republic of Singapore, or its registered assigns (hereinafter called "Warrant Holder"), is entitled to purchase from Equinix, Inc., a Delaware corporation ("Parent"), at any time during the Term of this Warrant, nine hundred sixty-five thousand six hundred seventy-four (965,674) shares of Series A Convertible Preferred Stock, par value $0.001 per share, of Parent (the "Series A Preferred Stock"), or shares of Series A-1 Convertible Preferred Stock, par value $0.001 per share, of Parent ("Series A-1 Preferred Stock" and together with the Series A Preferred Stock, the "Conversion Preferred Stock"), at the Warrant Price, payable as provided herein. The exercise of this Warrant shall be subject to the provisions, limitations and restrictions herein contained. This Warrant may be exercised in whole or in part. This Warrant shall be exercisable for shares of Series A Preferred Stock unless if at the time of exercise of this Warrant, the receipt of shares of Series A Preferred Stock by the Holder would cause (i) prior to the earlier of (A) the second anniversary of the Closing Date or (B) a Voting Stock Trigger Event (as defined in the Certificate of Designation), the voting power of the issued and outstanding shares held by such purchaser or its affiliates to exceed 40% of the aggregate voting power of all securities of the Parent then entitled to vote on the election of members of the Parent's board of directors or (ii) (x) the value of all outstanding voting securities held by such purchaser following such exercise would exceed $50,000,000 (as determined by reference to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder, or any successor statute, rules and regulations (the "HSR Act")), or any other applicable threshold that would require compliance with the HSR Act and (y) such purchaser has not complied with the HSR Act prior to such exercise, in which case, this Warrant shall be exercisable for shares of Series A-1 Preferred Stock.

Section 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Securities Purchase Agreement, dated October 2, 2002, by and among Parent, the Guarantors thereto and the Purchasers named therein (the "Purchase Agreement"). For all purposes of this Warrant, the following terms shall have the meanings indicated:

"Term of this Warrant" shall mean the period beginning on the date of initial issuance hereof and ending on the Maturity Date.

"Warrant Price" shall mean $0.01 per share of Common Stock into which one share of the Preferred Stock issuable upon exercise of this Warrant is convertible, subject to adjustment in accordance with Section 4.

"Warrants" shall mean this Preferred Stock Warrant and any other Preferred Stock Warrant or Preferred Stock Warrants issued in connection with the Purchase Agreement to the original holder of this Preferred Stock Warrant or issued to any transferees of such original holder or subsequent holder.

"Warrant Shares" shall mean shares of Conversion Preferred Stock, subject to adjustment or change as herein provided, purchased or purchasable by Warrant Holder upon the exercise hereof, *provided, however*, that if, as of any Exercise Date, any shares of Series A Preferred Stock have been converted to Common Stock pursuant to the conversion provisions contained in Section 5(a)(ii) or 5(b)(ii) of the Certificate of Designation, "Warrant Shares" shall mean shares of Common Stock.

Section 2. Exercise of Warrant.

2.1 Procedure for Exercise of Warrant. To exercise this Warrant in whole or in part (but not as to any fractional Warrant Share), Warrant Holder shall deliver to Parent at its office referred to in Section 8 at any time (the "Exercise Date") and from time to time during the Term of this Warrant: (i) the Notice of Exercise in the form of Exhibit A attached hereto, (ii) cash, certified or official bank check payable to the order of Parent, wire transfer of funds to Parent's account, or cancellation of any indebtedness of Parent to Warrant Holder (or any combination of any of the foregoing) in the amount of the Warrant Price for each share being purchased, and (iii) this Warrant. Notwithstanding any provisions herein to the contrary, if the Current Market Value is greater than the Warrant Price (at the date of calculation, as set forth below), in lieu of exercising this Warrant as hereinabove permitted, the Warrant Holder may elect to receive shares of Conversion Preferred Stock equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the office of Parent referred to in Section 8, together with the Notice of Exercise, in which event Parent shall issue to Warrant Holder that number of whole Warrant Shares computed using the following formula:

$$PS = \frac{WPS \times (CMV - WP)}{CMV}$$

Where

PS	equals the number of shares of Conversion Preferred Stock to be issued to Warrant Holder (or if the Warrant Shares are shares of Common Stock, the number of shares of Common Stock to be issued to Warrant Holder)
WPS	equals the number of shares of Conversion Preferred Stock purchasable under the Warrant (or if the Warrant Shares are shares of Common Stock, the number of shares of Common Stock purchasable under the Warrant), if only a portion of the Warrant is being exercised, under the portion of the Warrant being exercised (at the date of such calculation)
CMV	equals the Current Market Value of the number of shares of Common Stock into which one share of Conversion Preferred Stock is convertible (at the date of such calculation)
WP	equals the Warrant Price (as adjusted to the date of such calculation)

This Warrant shall be exercised by the Warrant Holder by the surrender of this Warrant to Parent at any time during usual business hours at Parent's principal place of business, accompanied by written notice, substantially in the form of Exhibit A attached hereto, that the Warrant Holder elects to exercise all or a portion of this Warrant and specifying the name or names (with address) in which a certificate or certificates for Warrant Shares are to be issued and (if so required by Parent) by a written instrument or instruments of transfer in form reasonably satisfactory to Parent duly executed by the Warrant Holder or its duly authorized attorney. Upon exercise of this Warrant, Parent shall deliver to Warrant Holder the certificate or certificates for the Warrant Shares so purchased within the number of days specified in Rule 15c6-1 under the Exchange Act applicable to open market transactions, *provided* that immediately prior to the close of business on the Exercise Date, the exercising Warrant Holder shall be deemed to be the holder of record of the Warrant Shares issuable upon exercise of this Warrant, notwithstanding that the share register of Parent shall then be closed or that certificates representing such Warrant Shares shall not then be actually delivered to such Person. Immediately prior to the close of business on the Exercise Date, all rights with respect to this Warrant so exercised, including the rights, if any, to receive notices, will terminate (in the case of a partial exercise, to the extent of the portion of this Warrant so exercised), except only the rights of the Warrant Holder to (i) receive certificates for the number of Warrant Shares into which this Warrant has been exercised; and (ii) exercise the rights to which the Warrant Holder is entitled as a holder of Warrant Shares.

2.2 Transfer Restriction Legend. Each certificate for Warrant Shares shall bear the following legends (and any additional legend required by (i) any applicable state securities laws and (ii) any securities exchange upon which such Warrant Shares may, at the time of such exercise, be listed) on the face thereof unless at the time of exercise such Warrant Shares shall be registered under the Securities Act:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT.

THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED (AS SUCH TERM IS DEFINED IN THAT SECURITIES PURCHASE AGREEMENT, DATED AS OF OCTOBER 2, 2002 (THE "AGREEMENT"), BY AND AMONG EQUINIX, INC., A DELAWARE CORPORATION ("PARENT"), THE GUARANTORS THERETO, AND THE PURCHASERS NAMED IN SCHEDULE 1 AND SCHEDULE 2 THERETO)) DURING THE PERIOD BEGINNING ON THE CLOSING DATE (AS SUCH TERM IS DEFINED IN THE AGREEMENT)AND CONTINUING TO

THE DATE THAT IS 180 DAYS FOLLOWING THE CLOSING DATE. A COPY OF THE AGREEMENT HAS BEEN FILED WITH THE SECRETARY OF PARENT AND IS AVAILABLE UPON REQUEST.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS WITH RESPECT TO VOTING AND OTHER MATTERS UNDER A GOVERNANCE AGREEMENT, DATED AS OF DECEMBER 31, 2002, BY AND AMONG EQUINIX, INC. AND CERTAIN OF ITS STOCKHOLDERS.

Any certificate issued at any time in exchange or substitution for any certificate bearing such legend (except a new certificate issued upon completion of a public distribution under a registration statement of the securities represented thereby) shall also bear such legend unless, in the opinion of counsel for Warrant Holder thereof (which counsel shall be reasonably satisfactory to Parent) the securities represented thereby are not, at such time, required by law to bear such legend. The second legend set forth above, and the second legend set forth on the face of this Warrant, shall be removed at the request of the Warrant Holder following the lapse of such restriction. If any holder of Warrant Shares sells, transfers or otherwise disposes of Warrant Shares, the third legend set forth above shall, at the request of the holder of the Warrant Shares, be removed from the certificates representing the Warrant Shares so sold, transferred or disposed; *provided* that the sale, transfer or disposition is effected subject to the adjustment or termination of the board representation rights of the Stockholders pursuant to Article VII of the bylaws of Parent, as a result of such sale, transfer or disposition.

Section 3. Covenants as to Series A Preferred Stock . Parent covenants and agrees that all Warrant Shares that may be issued upon the exercise of the rights represented by this Warrant and all shares of Common Stock that may be issued upon conversion of the Conversion Preferred Stock shall, upon issuance, be validly issued, fully-paid and nonassessable, and free from all taxes, liens and charges with respect to the issue thereof and not issued in violation of any preemptive rights. Parent further covenants and agrees that it shall pay when due and payable any and all federal and state taxes which may be payable in respect of the issue of this Warrant or any Conversion Preferred Stock or Common Stock or certificates therefor issuable upon the exercise of this Warrant or the conversion of the Conversion Preferred Stock, as applicable. Parent further covenants and agrees that Parent shall at all times have authorized and reserved, free from preemptive rights, a sufficient number of shares of Conversion Preferred Stock and Common Stock to provide for the exercise of the rights represented by this Warrant and for conversion of the Conversion Preferred Stock. Parent further covenants and agrees that if any shares of capital stock to be reserved for the purpose of the issuance of shares upon the exercise of this Warrant or conversion of the Conversion Preferred Stock require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon exercise, then Parent shall in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If and so long as the Common Stock issuable upon conversion of the Conversion Preferred Stock is listed on any national securities exchange, Parent shall, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion of the Conversion Preferred Stock.

Section 4. Adjustment of Warrant Price and Number and Kind of Warrant Shares. The Warrant Price and number and kind of Warrant Shares shall be subject to adjustment from time as set forth in this Section 4. Upon each adjustment of the Warrant Price as provided herein, Warrant Holder shall thereafter be entitled to purchase, at the Warrant Price resulting from such adjustment, the number of shares (calculated to the nearest tenth of a share) obtained by multiplying the Warrant Price in effect immediately prior to such adjustment by the number of shares purchasable pursuant hereto immediately prior to such adjustment and dividing the product thereof by the Warrant Price resulting from such adjustment; *provided* that no adjustment shall be given effect hereunder to the extent that the event that otherwise would give rise to such adjustment also gives rise to an adjustment of the Conversion Ratio under the Certificate of Designation and the effect of both such adjustments would be duplicative.

(a) Adjustment for Change in Capital Stock:

(i) If, after the date hereof, Parent

(A) pays a dividend or makes a distribution on any of its Common Stock in shares of any of its Common Stock or Warrants, rights or options exercisable for its Common Stock, other than a dividend or distribution of the type described in Section 4(h);

(B) pays a dividend or makes a distribution on any of its Common Stock in shares of any of its Capital Stock, other than Common Stock or rights, warrants or options exercisable for its Common Stock and other than a dividend or distribution of the type of described in Section 4(h); or

(C) subdivides any of its outstanding shares of Common Stock into a greater number of shares; or

(D) combines any of its outstanding shares of Common Stock into a smaller number of shares; or

(E) issues by reclassification of any of its Common Stock any shares of any of its Capital Stock;

then the Warrant Price in effect immediately prior to such action shall be adjusted so that the Warrant Holder may receive the number of shares of Capital Stock of Parent which such Warrant Holder would have owned immediately following such action if such Warrant Holder had exercised this Warrant (and had converted any Conversion Preferred Stock issuable upon such exercise) immediately prior to such action or immediately prior to the record date applicable thereto, if any.

(ii) The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification. If such dividend or distribution is not so paid or made or such subdivision, combination or reclassification is not effected, the Warrant Price shall again be adjusted to be the Warrant Price which would then be in effect if such record date or effective date had not been so fixed.

(iii) If, after an adjustment, a Warrant Holder upon exercise of this Warrant may receive shares of two or more classes of Capital Stock of Parent, the Warrant Price shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class of Capital Stock as is contemplated by this Section 4(a) with respect to the Common Stock, on terms comparable to those applicable to the Common Stock in this Section 4.

(b) Adjustment for Sale of Common Stock Below Current Market Value:

(i) If, after the date hereof, Parent makes a Dilutive Issuance other than an Excluded Conversion Adjustment, the Warrant Price shall be adjusted in accordance with the formula:

$$WP' = WP\frac{(CS+(AC/WP))}{CS+AS}$$

WP' =	The adjusted Warrant Price;
WP =	The Warrant Price prior to the Dilutive Issuance;
AC=	Aggregate consideration paid for the securities issued in the Dilutive Issuance;
CS =	Common Stock Outstanding prior to the Dilutive Issuance; and
AS =	Number of shares of securities (on as-converted basis) issued in the Dilutive Issuance.

(ii) The adjustment shall become effective immediately after the Dilutive Issuance.

(iii) In the case of a Dilutive Issuance for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by Parent for any underwriting or otherwise in connection with the issuance and sale thereof.

(iv) In the case of a Dilutive Issuance for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(v) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefore:

(A) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 4(b)(ii) and 4(b)(iii)), if any, received by Parent upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by Parent (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 4(b)(ii) and 4(b)(iii)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Warrant Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(D) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Warrant Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

The number of shares deemed issued and the consideration deemed paid therefor in the Dilutive Issuance pursuant to Sections 4(b)(v)(A) and 4(b)(v)(B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 4(b)(v)(C) or 4(b)(v)(D).

(vi) No adjustment shall be made under this Section 4(b) for any adjustment which is the subject of Section 4(a).

(c) Whenever the Warrant Price is adjusted, Parent shall promptly mail to the Warrant Holder a notice of the adjustment. Parent shall obtain a certificate from Parent's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct.

(d) If Parent consummates a Fundamental Transaction, as a condition to consummating any such transaction the Surviving Person shall assume the obligations under the Warrants and issue to each Warrant Holder an assumption agreement. The assumption agreement shall provide (i) that the Warrant Holder may exercise the Warrant for the kind and amount of securities, cash or other assets which such holder would have received immediately after the Fundamental Transaction if such holder had exercised such Warrant immediately before the effective date of the transaction, assuming (to the extent applicable) that such holder (A) was not a constituent person or an affiliate of a constituent person to such transaction, (B) made no election with respect thereto, and (C) was treated alike with the plurality of non-electing holders, and (ii) that the Surviving Person shall succeed to and be substituted to every obligation of Parent in respect of this Warrant. The assumption agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 4. The Surviving Person shall mail to Warrant Holder a notice briefly describing the assumption agreement. If the issuer of securities deliverable upon exercise of Warrants is an affiliate of the Surviving Person, that issuer shall join in such assumption agreement.

(e) Parent shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Conversion Preferred Stock and Common Stock, or shares of Conversion Preferred Stock or Common Stock held in the treasury of Parent, for issuance upon exercise of this Warrant and payment of the exercise price, and conversion of the Conversion Preferred Stock issuable upon exercise hereof, the full number of shares of Conversion Preferred Stock and Common Stock, as applicable, then deliverable upon the exercise of the entire Warrant or Warrants outstanding and conversion of all Conversion Preferred Stock issued or issuable upon exercise thereof, and the shares so deliverable shall be fully paid and nonassessable and free from all liens and security interests.

(f) After an adjustment to the Warrant Price under this Section 4, any subsequent event requiring an adjustment under this Section 4 shall cause an adjustment to the Warrant Price as so adjusted.

(g) Parent will not be required to issue fractional shares upon exercise of this Warrant or distribute share certificates that evidence fractional shares. In lieu of fractional shares, there shall be paid to the Warrant Holder an amount in cash equal to the same fraction of the Current Market Value per share of Common Stock on the Business Day preceding the Exercise Date. Such payments will be made by check.

(h) If at any time Parent grants Distribution Rights or, without duplication, makes any Distribution on the Capital Stock, then Parent shall grant, issue, sell or make to each Warrant Holder, the aggregate Distribution Rights or Distribution, as the case may be, which such Warrant Holder would have acquired if such Warrant Holder had held the maximum number of shares acquirable upon complete exercise of this Warrant immediately before the record date for the grant, issuance or sale of such Distribution Rights or Distribution, as the case may be, or, if there is no such record date, the date as of which the record holders of Capital Stock are to be determined for the grant, issue or sale of such Distribution Rights or Distribution, as the case may be.

Section 5. Ownership.

5.1 Ownership of Warrant. Parent may deem and treat the person in whose name this Warrant is registered as the holder and owner hereof (notwithstanding any notations of ownership or writing hereon made by anyone other than Parent) for all purposes and shall not be affected by any notice to the contrary until presentation of this Warrant for registration of transfer as provided in this Section 5.

5.2 Transfer and Replacement. This Warrant and all rights hereunder are transferable in whole or in part upon the books of Parent by Warrant Holder hereof in person or by duly authorized attorney, and a new Warrant or Warrants, of the same tenor as this Warrant but registered in the name of the transferee or transferees (and in the name of Warrant Holder, if a partial transfer is effected) shall be made and delivered by Parent upon surrender of this Warrant duly endorsed, at the office of Parent referred to in Section 8 hereof, together with a properly executed Assignment (in the form of Exhibit B or Exhibit C hereto, as the case may be). Upon receipt by Parent of evidence reasonably satisfactory to it of the loss, theft or destruction, and, in such case, of indemnity or security reasonably satisfactory to it, and upon surrender of this Warrant if mutilated, Parent shall make and deliver a new Warrant of like tenor, in lieu of this Warrant; *provided* that if the Warrant Holder hereof is an instrumentality of a state or local government or an institutional holder or a nominee for such an instrumentality or institutional holder an irrevocable agreement of indemnity by such Warrant Holder shall be sufficient for all purposes of this Section 5, and no evidence of loss or theft or destruction shall be necessary. This Warrant shall be promptly cancelled by Parent upon the surrender hereof in connection with any transfer or replacement. Except as otherwise provided above, in the case of the loss, theft or destruction of a Warrant, Parent shall pay all expenses, taxes and other charges payable in connection with any transfer or replacement of this Warrant, other than stock transfer taxes (if any) payable in connection with a transfer of this Warrant, which shall be payable by Warrant Holder. Warrant Holder shall not transfer this Warrant and the rights hereunder except in compliance with federal and state securities laws.

Section 6. Notice of Dissolution or Liquidation. In case of any distribution of the assets of Parent in dissolution or liquidation (except under circumstances when Section 4(d) shall be applicable), Parent shall give notice thereof to Warrant Holder hereof and shall make no distribution to stockholders until the expiration of thirty days from the date of mailing of the aforesaid notice and, in any case, Warrant Holder hereof may exercise this Warrant within thirty days from the date of the giving of such notice, and all rights herein granted not so exercised within such thirty-day period shall thereafter become null and void.

Section 7. Notice of Dividends. If the Board of Directors of Parent shall declare any dividend or other distribution on the Conversion Preferred Stock except by way of a stock dividend payable in shares of either series of Conversion Preferred Stock, Parent shall mail notice thereof to Warrant Holder hereof not less than thirty days prior to the record date fixed for determining stockholders entitled to participate in such dividend or other distribution, and Warrant Holder hereof shall not participate in such dividend or other distribution unless this Warrant is exercised prior to such record date. The provisions of this Section 7 shall not apply to distributions made in connection with transactions covered by Section 4.

Section 8. Notices. Any notice or other document required or permitted to be given or delivered to Warrant Holder shall be delivered at, or sent by certified or registered mail to, Warrant Holder at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished to Parent in writing by Warrant Holder. Any notice or other document required or permitted to be given or delivered to Parent shall be delivered at, or sent by certified or registered mail to, Parent at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished in writing to Warrant Holder by Parent. Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

Section 9. No Rights as Stockholder; Limitation of Liability. This Warrant shall not entitle Warrant Holder to any of the rights of a stockholder of Parent except upon exercise in accordance with the terms hereof. No provision hereof, in the absence of affirmative action by Warrant Holder to purchase shares of Series A Preferred Stock, and no mere enumeration herein of the rights or privileges of Warrant Holder, shall give rise to any liability of Warrant Holder for the Warrant Price hereunder or as a stockholder of Parent, whether such liability is asserted by Parent or by creditors of Parent.

Section 10. Governing Law; Arbitration. This Warrant and the rights and obligations of the parties under this Warrant shall be governed by and construed and enforced in accordance with the laws of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York). Each of Parent and the Warrant Holder agree that any dispute, controversies or claims (whether in contract, tort or otherwise) arising out of, related to or otherwise by virtue of this Warrant, breach of this Warrant or the transactions contemplated hereby shall be finally settled by arbitration (which shall be the exclusive forum for dispute resolution) as provided in Section 11.12 of the Purchase Agreement.

Section 11. Amendments. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by both parties (or any respective successor in interest thereof). The headings in this Warrant are for purposes of reference only and shall not affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, Parent has caused this Warrant to be signed by its duly authorized officer as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EXHIBIT A

FORM OF NOTICE OF EXERCISE

[To be signed only upon exercise of the Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO EXERCISE THE ATTACHED WARRANT

The undersigned hereby exercises the right to purchase _____ Warrant Shares which the undersigned is entitled to purchase by the terms of the attached Warrant according to the conditions thereof, and herewith

[check appropriate box(es)]

- makes payment of $_____ therefor in cash, certified or official bank check or wire transfer of funds;
- makes payment of $_____ therefor through cancellation of indebtedness; or
- directs Parent to withhold a number of shares of which the aggregate Current Market Value is equal to the Warrant Price in lieu of payment of the Warrant Price, as described in Section 2.1 of the Warrant.

All shares to be issued pursuant hereto shall be issued in the name of and the initial address of such person to be entered on the books of Equinix, Inc., a Delaware corporation, shall be:

The shares are to be issued in certificates of the following denominations:

_____

By: _____
Name:
Title:

Dated: _____

EXHIBIT B

FORM OF ASSIGNMENT
(ENTIRE)

[To be signed only upon transfer of entire Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ all rights of the undersigned under and pursuant to the attached Warrant, and the undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF ASSIGNMENT
(PARTIAL)

[To be signed only upon partial transfer of Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ (i) the rights of the undersigned to purchase _____ Warrant Shares under and pursuant to the attached Warrant, and (ii) on a non-exclusive basis, all other rights of the undersigned under and pursuant to the attached Warrant, it being understood that the undersigned shall retain, severally (and not jointly) with the transferee(s) named herein, all rights assigned on such non-exclusive basis. The undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

Exhibit 10.79

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO EQUINIX, INC., QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

THE SECURITIES EVIDENCED HEREBY MAY NOT BE TRANSFERRED (AS SUCH TERM IS DEFINED IN THAT SECURITIES PURCHASE AGREEMENT, DATED AS OF OCTOBER 2, 2002 (THE "AGREEMENT"), BY AND AMONG EQUINIX, INC., A DELAWARE CORPORATION ("PARENT"), THE GUARANTORS THERETO, AND THE PURCHASERS NAMED IN SCHEDULE 1 AND SCHEDULE 2 THERETO)) DURING THE PERIOD BEGINNING ON THE CLOSING DATE (AS SUCH TERM IS DEFINED IN THE AGREEMENT) AND CONTINUING TO THE DATE THAT IS 180 DAYS FOLLOWING THE CLOSING DATE, EXCEPT AS PERMITTED UNDER THE AGREEMENT. A COPY OF THE AGREEMENT HAS BEEN FILED WITH THE SECRETARY OF PARENT AND IS AVAILABLE UPON REQUEST.

EQUINIX, INC.

CHANGE IN CONTROL WARRANT

December 31, 2002

Warrant No.	CC-1
Date of Initial Issuance:	December 31, 2002
Original Principal Amount:	$30.0 million
Initial Warrant Price:	$0.01
Expiration Date:	December 31, 2007

THIS CERTIFIES THAT for value received, I-STT Investments Pte Ltd, a company organized under the laws of Republic of Singapore, or its registered assigns (hereinafter called "Warrant Holder"), is entitled to purchase from Equinix, Inc., a Delaware corporation ("Parent"), from and after the occurrence of a Change in Control until the expiration of the Term of this Warrant, a number of shares of common stock, $0.001 par value per share, of Parent (the "Common Stock"), equal to the Adjusted Warrant Number, at the Warrant Price, payable as provided herein. The exercise of this Warrant shall be subject to the provisions, limitations and restrictions herein contained. This Warrant may be exercised in whole or in part.

Section 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Securities Purchase Agreement, dated October 2, 2002, by and among Parent, the Guarantors thereto and the Purchasers named therein (the "Purchase Agreement"). For all purposes of this Warrant, the following terms shall have the meanings indicated:

"Adjusted Warrant Number" means the quotient of (x) the product of (i) the Principal Amount and (ii) the Premium Factor divided by (y) the Current Market Value.

"Premium Factor" shall mean (a) for the period from the Closing Date to and including October 31, 2004, 20%; (b) with respect to the period from and including November 1, 2004 to and including October 31, 2006, 15%; and (c) with respect to the period from and including November 1, 2006 to and including the Maturity Date, 5%.

"Principal Amount" shall mean the Original Principal Amount shown on the cover page hereof, less the aggregate principal amount of Notes originally issued to the original holder of this Warrant (or its predecessor) under the Purchase Agreement which have been repaid or converted into equity securities of Parent, plus the aggregate principal amount of any PIK Notes issued in respect of such Notes which have not been repaid or converted into equity securities of Parent. The Principal Amount shall be adjusted in connection with any partial transfer of this Warrant pursuant to Section 6.2 to maintain the economic effect intended in this Warrant.

"Term of this Warrant" shall mean the period beginning on the date of initial issuance hereof and ending on the Maturity Date.

"Warrant Price" shall mean $0.01 per share, subject to adjustment in accordance with Section 4.

"Warrants" shall mean this Change in Control Warrant and any other Change in Control Warrant issued in connection with the Purchase Agreement to the original holder of any Change in Control Warrant or issued to any transferees of such original holder or subsequent holder.

"Warrant Shares" shall mean shares of Common Stock, subject to adjustment or change as herein provided, purchased or purchasable by Warrant Holder upon the exercise hereof.

Section 2. Adjusted Warrant Number. The Adjusted Warrant Number shall be calculated prior to the exercise of the Warrant pursuant to Section 3 or transfer of this Warrant pursuant to Section 6.2.

Section 3. Exercise of Warrant.

3.1 Procedure for Exercise of Warrant. To exercise this Warrant in whole or in part (but not as to any fractional share of Common Stock), Warrant Holder shall deliver to Parent at its office referred to in Section 10 at any time (the "Exercise Date") and from time to time during the Term of this Warrant: (i) the Notice of Exercise in the form of Exhibit A attached hereto, (ii) cash, certified or official bank check payable to the order of Parent, wire transfer of funds to Parent's account, or cancellation of any indebtedness of Parent to Warrant Holder (or any combination of any of the foregoing) in the amount of the Warrant Price for each share being purchased, and (iii) this Warrant. Notwithstanding any provisions herein to the contrary, if the Current Market Value is greater than the Warrant Price (at the date of calculation, as set forth below), in lieu of exercising this Warrant as hereinabove permitted, the Warrant Holder may elect to receive shares of Common Stock equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the office of Parent referred to in Section 10 hereof, together with the Notice of Exercise, in which event Parent shall issue to Warrant Holder that number of whole shares of Common Stock computed using the following formula:

$$CS = \frac{WCS\ (CMV-WP)}{CMV}$$

Where

CS	equals the number of shares of Common Stock to be issued to Warrant Holder
WCS	equals the Adjusted Warrant Number or, if only a portion of the Warrant is being exercised, the Adjusted Warrant Number for the portion of the Warrant being exercised (at the date of such calculation)
CMV	equals the Current Market Value (at the date of such calculation)
WP	equals the Warrant Price (as adjusted to the date of such calculation)

This Warrant shall be exercised by the Warrant Holder by the surrender of this Warrant to Parent at any time during usual business hours at Parent's principal place of business, accompanied by written notice, substantially in the form of Exhibit A attached hereto, that the Warrant Holder elects to exercise all or a portion of this Warrant and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by Parent) by a written instrument or instruments of transfer in form reasonably satisfactory to Parent duly executed by the Warrant Holder or its duly authorized attorney. Upon exercise of this Warrant, Parent shall deliver to Warrant Holder the certificate or certificates for the shares of Series B Preferred Stock so purchased within the number of days specified in Rule 15c6-1 under the Exchange Act with respect to open market transactions; *provided* that immediately prior to the close of business on the Exercise Date, the exercising Warrant Holder shall be deemed to be the holder of record of the shares of Common Stock, as applicable, issuable upon exercise of this Warrant, notwithstanding that the share register of Parent shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Person. Immediately prior to the close of business on the Exercise Date, all rights with respect to this Warrant so exercised, including the rights, if any, to receive notices, will terminate (in the case of a partial exercise, to the extent of the portion of this Warrant so exercised), except only the rights of the Warrant Holder to (i) receive certificates for the number of shares of Common Stock, into which this Warrant has been exercised; and (ii) exercise the rights to which the Warrant Holder is entitled as a holder of Common Stock.

3.2 Transfer Restriction Legend. Each certificate for Warrant Shares shall bear the following legend (and any additional legend required by (i) any applicable state securities laws and (ii) any securities exchange upon which such Warrant Shares may, at the time of such exercise, be listed) on the face thereof unless at the time of exercise such Warrant Shares shall be registered under the Securities Act:

'THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT."

THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED (AS SUCH TERM IS DEFINED IN THAT SECURITIES PURCHASE AGREEMENT, DATED AS OF OCTOBER 2, 2002 (THE "AGREEMENT"), BY AND AMONG EQUINIX, INC., A DELAWARE CORPORATION ("PARENT"), THE GUARANTORS THERETO, AND THE PURCHASERS NAMED IN SCHEDULE 1 AND SCHEDULE 2 THERETO)) DURING THE PERIOD BEGINNING ON THE CLOSING DATE (AS SUCH TERM IS DEFINED IN THE AGREEMENT) AND CONTINUING TO THE DATE THAT IS 180 DAYS FOLLOWING THE CLOSING DATE. A COPY OF THE AGREEMENT HAS BEEN FILED WITH THE SECRETARY OF PARENT AND IS AVAILABLE UPON REQUEST.

(a) Any certificate issued at any time in exchange or substitution for any certificate bearing such legend (except a new certificate issued upon completion of a public distribution under a registration statement of the securities represented thereby) shall also bear such legend unless, in the opinion of counsel for Warrant Holder thereof (which counsel shall be reasonably satisfactory to Parent) the securities represented thereby are not, at such time, required by law to bear such legend. The second legend set forth above, and the second legend set forth on the face of this Warrant, shall be removed at the request of the Warrant Holder following the lapse of such restriction.

Section 4. Covenants as to Common Stock. Parent covenants and agrees that all shares of Common Stock that may be issued upon the exercise of the rights represented by this Warrant shall, upon issuance, be validly issued, fully-paid and nonassessable, and free from all taxes, liens and charges with respect to the issue thereof and not issued in violation of any preemptive rights. Parent further covenants and agrees that it shall pay when due and payable any and all federal and state taxes which may be payable in respect of the issue of this Warrant or any Common Stock or certificates therefor issuable upon the exercise of this Warrant. Parent further covenants and agrees that Parent shall at all times have authorized and reserved, free from preemptive rights, a sufficient number of shares of Common Stock to provide for the exercise of the rights represented by this Warrant. Parent further covenants and agrees that if any shares of capital stock to be reserved for the purpose of the issuance of shares upon the exercise of this Warrant require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon exercise, then Parent shall in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If and so long as the Common Stock issuable upon conversion of this Warrant is listed on any national securities exchange, Parent shall, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion of this Warrant.

Section 5. Adjustment of Warrant Price and Number and Kind of Warrant Shares. The Warrant Price and number and kind of Warrant Shares shall be subject to adjustment from time as set forth in this Section 5; *provided* that no adjustment to the number of Warrant Shares shall be made in connection with any adjustment of the Warrant Price under Section 5(b).

(a) Adjustment for Change in Capital Stock:

(i) If, after the date hereof, Parent

(A) pays a dividend or makes a distribution on any of its Common Stock in shares of any of its Common Stock or Warrants, rights or options exercisable for its Common Stock, other than a dividend or distribution of the type described in Section 5(h);

(B) pays a dividend or makes a distribution on any of its Common Stock in shares of any of its Capital Stock, other than Common Stock or rights, warrants or options exercisable for its Common Stock and other than a dividend or distribution of the type of described in Section 5(h); or

(C) subdivides any of its outstanding shares of Common Stock into a greater number of shares; or

(D) combines any of its outstanding shares of Common Stock into a smaller number of shares; or

(E) issues by reclassification of any of its Common Stock any shares of any of its Capital Stock;

then the Warrant Price in effect immediately prior to such action shall be adjusted so that the Warrant Holder may receive the number of shares of Capital Stock of Parent which such Warrant Holder would have owned immediately following such action if such Warrant Holder had exercised this Warrant immediately prior to such action or immediately prior to the record date applicable thereto, if any.

(ii) The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a subdivision, combination or reclassification. If such dividend or distribution is not so paid or made or such subdivision, combination or reclassification is not effected, the Warrant Price shall again be adjusted to be the Warrant Price which would then be in effect if such record date or effective date had not been so fixed.

(iii) If, after an adjustment, a Warrant Holder, upon exercise of this Warrant may receive shares of two or more classes of Capital Stock of Parent, the Warrant Price shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class of Capital Stock as is contemplated by this Section 5(a) with respect to the Common Stock, on terms comparable to those applicable to the Common Stock in this Section 5.

(b) Adjustment for Sale of Common Stock Below Current Market Value:

(i) If, after the date hereof, Parent makes a Dilutive Issuance other than an Excluded Conversion Adjustment, the Warrant Price shall be adjusted in accordance with the formula:

$$WP' = \frac{WP(CS+(AC/WP))}{CS+AS}$$

WP' = The adjusted Warrant Price;
WP = The Warrant Price prior to the Dilutive Issuance;
AC= Aggregate consideration paid for the securities issued in the Dilutive Issuance;
CS = Common Stock Outstanding prior to the Dilutive Issuance; and
AS = Number of shares of securities (on as-converted basis) issued in the Dilutive Issuance.

(ii) The adjustment shall become effective immediately after the Dilutive Issuance.

(iii) In the case of the issuance of a Dilutive Issuance for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by Parent for any underwriting or otherwise in connection with the issuance and sale thereof.

(iv) In the case of a Dilutive Issuance for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors irrespective of any accounting treatment.

(v) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefore:

(A) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 5(b)(ii) and 5(b)(iii)), if any, received by Parent upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(B) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by Parent (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 5(b)(ii) and 5(b)(iii)).

(C) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Warrant Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(D) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Warrant Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

The number of shares deemed issued and the consideration deemed paid therefor in the Dilutive Issuance pursuant to Sections 5(b)(v)(A) and 5(b)(v)(B) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section 5(b)(v)(C) or 5(b)(v)(D).

(vi) No adjustment shall be made under this Section 5(b) for any adjustment which is the subject of Section 5(a).

(c) Whenever the Warrant Price is adjusted, Parent shall promptly mail to the Warrant Holder a notice of the adjustment. Parent shall obtain a certificate from Parent's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct.

(d) If Parent, proposes a Fundamental Transaction or Change in Control, as a condition to consummating any such transaction the Surviving Person shall assume the obligations under the Warrants and issue to each Warrant Holder an assumption agreement. The assumption agreement shall provide (i) that the Warrant Holder may exercise the Warrant for the kind and amount of securities, cash or other assets which such holder would have received immediately after the Fundamental Transaction or Change in Control if such holder had exercised such Warrant immediately before the effective date of the transaction, assuming (to the extent applicable) that such holder (A) was not a constituent person or an affiliate of a constituent person to such transaction, (B) made no election with respect thereto, and (C) was treated alike with the plurality of non-electing holders, and (ii) that the Surviving Person shall succeed to and be substituted to every obligation of Parent in respect of this Warrant. The assumption agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 5. The Surviving Person shall mail to Warrant Holder a notice briefly describing the assumption agreement. If the issuer of securities deliverable upon exercise of Warrants is an affiliate of the Surviving Person, that issuer shall join in such assumption agreement.

(e) Parent shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, or shares of Common Stock held in the treasury of Parent, for the issuance upon exercise of this Warrant and payment of the exercise price, the full number of shares of Common Stock then deliverable upon the exercise of the entire Warrant, and the shares so deliverable shall be fully paid and nonassessable and free from all liens and security interests.

(f) After an adjustment to the Warrant Price under this Section 5, any subsequent event requiring an adjustment under this Section 5 shall cause an adjustment to the Warrant Price as so adjusted.

(g) Parent will not be required to issue fractional shares upon exercise of this Warrant or distribute share certificates that evidence fractional shares. In lieu of fractional shares, there shall be paid to the Warrant Holder an amount in cash equal to the same fraction of the Current Market Value, per share of Common Stock on the Business Day preceding the Exercise Date. Such payments will be made by check.

(h) If at any time Parent grants, Distribution Rights or, without duplication, makes any Distribution on the Capital Stock, then Parent shall grant, issue, sell or make to each Warrant Holder, the aggregate Distribution Rights or Distribution, as the case may be, which such Warrant Holder would have acquired if such Warrant Holder had held the maximum number of shares acquirable upon complete exercise of this Warrant immediately before the record date for the grant, issuance or sale of such Distribution Rights or Distribution, as the case may be, or, if there is no such record date, the date as of which the record holders of Capital Stock are to be determined for the grant, issue or sale of such Distribution Rights or Distribution, as the case may be.

Section 6. Ownership.

6.1 Ownership of Warrant. Parent may deem and treat the person in whose name this Warrant is registered as the holder and owner hereof (notwithstanding any notations of ownership or writing hereon made

by anyone other than Parent) for all purposes and shall not be affected by any notice to the contrary until presentation of this Warrant for registration of transfer as provided in this Section 6.

6.2 Transfer and Replacement. This Warrant and all rights hereunder are transferable in whole or in part upon the books of Parent by Warrant Holder hereof in person or by duly authorized attorney, and a new Warrant or Warrants, of the same tenor as this Warrant but registered in the name of the transferee or transferees (and in the name of Warrant Holder, if a partial transfer is effected) shall be made and delivered by Parent upon surrender of this Warrant duly endorsed, at the office of Parent referred to in Section 10, together with a properly executed Assignment (in the form of Exhibit B or Exhibit C hereto, as the case may be). Upon receipt by Parent of evidence reasonably satisfactory to it of the loss, theft or destruction, and, in such case, of indemnity or security reasonably satisfactory to it, and upon surrender of this Warrant if mutilated, Parent shall make and deliver a new Warrant of like tenor, in lieu of this Warrant; *provided* that if the Warrant Holder hereof is an instrumentality of a state or local government or an institutional holder or a nominee for such an instrumentality or institutional holder an irrevocable agreement of indemnity by such Warrant Holder shall be sufficient for all purposes of this Section 6, and no evidence of loss or theft or destruction shall be necessary. This Warrant shall be promptly cancelled by Parent upon the surrender hereof in connection with any transfer or replacement. Except as otherwise provided above, in the case of the loss, theft or destruction of a Warrant, Parent shall pay all expenses, taxes and other charges payable in connection with any transfer or replacement of this Warrant, other than stock transfer taxes (if any) payable in connection with a transfer of this Warrant, which shall be payable by Warrant Holder. Warrant Holder shall not transfer this Warrant and the rights hereunder except in compliance with federal and state securities laws.

Section 7. Notice of Dissolution or Liquidation. In case of any distribution of the assets of Parent in dissolution or liquidation (except under circumstances when Section 5(d) shall be applicable), Parent shall give notice thereof to Warrant Holder hereof and shall make no distribution to stockholders until the expiration of thirty days from the date of mailing of the aforesaid notice and, in any case, Warrant Holder hereof may exercise this Warrant within thirty days from the date of the giving of such notice, and all rights herein granted not so exercised within such thirty-day period shall thereafter become null and void.

Section 8. Notice of Dividends. If the Board of Directors of Parent shall declare any dividend or other distribution on its Common Stock except by way of a stock dividend payable in shares of its Common Stock, Parent shall mail notice thereof to Warrant Holder hereof not less than thirty days prior to the record date fixed for determining stockholders entitled to participate in such dividend or other distribution, and Warrant Holder hereof shall not participate in such dividend or other distribution unless this Warrant is exercised prior to such record date. The provisions of this Section 8 shall not apply to distributions made in connection with transactions covered by Section 5.

Section 9. Special Arrangements of Parent. Parent covenants and agrees that during the Term of this Warrant, unless otherwise approved by Warrant Holder, Parent shall not amend its certificate or articles, as the case may be, of incorporation to eliminate as an authorized class of capital stock that class denominated as “Common Stock” on the date hereof.

Section 10. Notices. Any notice or other document required or permitted to be given or delivered to Warrant Holder shall be delivered at, or sent by certified or registered mail to, Warrant Holder at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished to Parent in writing by Warrant Holder. Any notice or other document required or permitted to be given or delivered to Parent shall be delivered at, or sent by certified or registered mail to, Parent at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished in writing to Warrant Holder by Parent. Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

Section 11. No Rights as Stockholder; Limitation of Liability. This Warrant shall not entitle Warrant Holder to any of the rights of a stockholder of Parent except upon exercise in accordance with the terms hereof. No provision hereof, in the absence of affirmative action by Warrant Holder to purchase shares of Common Stock, and no mere enumeration herein of the rights or privileges of Warrant Holder, shall give rise to any liability of Warrant Holder for the Warrant Price hereunder or as a stockholder of Parent, whether such liability is asserted by Parent or by creditors of Parent.

Section 12. Governing Law; Arbitration. This Warrant and the rights and obligations of the parties under this Warrant shall be governed by and construed and enforced in accordance with the laws of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York). Each of Parent and the Warrant Holder agree that any dispute, controversies or claims (whether in contract, tort or otherwise) arising out of, related to or otherwise by virtue of this Warrant, breach of this Warrant or the transactions contemplated hereby shall be finally settled by arbitration (which shall be the exclusive forum for dispute resolution) as provided in Section 11.12 of the Purchase Agreement.

Section 13. Amendments. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by both parties (or any respective successor in interest thereof). The headings in this Warrant are for purposes of reference only and shall not affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, Parent has caused this Warrant to be signed by its duly authorized officer as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EXHIBIT A

FORM OF NOTICE OF EXERCISE

[To be signed only upon exercise of the Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO EXERCISE THE ATTACHED WARRANT

The undersigned hereby exercises the right to purchase _____ shares of Common Stock which the undersigned is entitled to purchase by the terms of the attached Warrant according to the conditions thereof, and herewith

[check appropriate box(es)]

- makes payment of $_____ therefor in cash, certified or official bank check or wire transfer of funds;
- makes payment of $_____ therefor through cancellation of indebtedness; or
- directs Parent to withhold a number of shares of which the aggregate Current Market Value is equal to the Warrant Price in lieu of payment of the Warrant Price, as described in Section 2.1 of the Warrant.

All shares to be issued pursuant hereto shall be issued in the name of and the initial address of such person to be entered on the books of Equinix, Inc., a Delaware corporation, shall be:

The shares are to be issued in certificates of the following denominations:

_____

By: _____
Name:
Title:

Dated: _____

EXHIBIT B

FORM OF ASSIGNMENT
(ENTIRE)

[To be signed only upon transfer of entire Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ all rights of the undersigned under and pursuant to the attached Warrant, and the undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF ASSIGNMENT
(PARTIAL)

[To be signed only upon partial transfer of Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ (i) the rights of the undersigned to $_____ of Principal Amount under and pursuant to the attached Warrant, and (ii) on a non-exclusive basis, all other rights of the undersigned under and pursuant to the attached Warrant, it being understood that the undersigned shall retain, severally (and not jointly) with the transferee(s) named herein, all rights assigned on such non-exclusive basis. The undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

Exhibit 10.80

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE PARENT, QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

EQUINIX, INC.

SERIES A CASH TRIGGER WARRANT

December 31, 2002

Warrant No	CT-1
Date of Initial Issuance:	December 31, 2002

THIS CERTIFIES THAT for value received, i-STT Investments Pte Ltd, or its registered assigns (hereinafter called "Warrant Holder"), is entitled to purchase from Equinix, Inc., a Delaware corporation ("Parent"), at any time during any Exercise Period (as defined below) until the Expiration Date (as defined below), the number of shares of common stock, $0.001 par value per share, of Parent ("Common Stock") equal to the quotient obtained as of any Exercise Date (as defined below) by dividing (i) $10 million ("Purchase Amount"), less any proceeds received by Parent from time to time as a result of previous exercises under this Warrant, by (ii) the Warrant Price (as defined below) as of such Exercise Date, at the Warrant Price as of such Exercise Date, payable as provided herein. The exercise of this Warrant shall be subject to the provisions, limitations and restrictions herein contained. This Warrant may be exercised in whole or from time to time in part.

Section 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Securities Purchase Agreement, dated October 2, 2002, by and among Parent, the Guarantors thereto and the Purchasers named therein (the "Purchase Agreement"). For all purposes of this Warrant, the following terms shall have the meanings indicated:

"Amended and Restated Credit Facility" shall mean the Second Amended and Restated Credit and Guaranty Agreement, dated as of December 31, 2002, by and among Equinix Operating Co., Inc., Equinix, Inc. and certain of its subsidiaries, various lenders, Salomon Smith Barney Inc., and Citicorp USA, Inc., as the same may be amended or restated from time to time.

"Credit Documents" shall have the meaning ascribed to such term in the Amended and Restated Credit Facility.

"CTW Holders" is defined in Section 2.2(c) of this Warrant.

"Common Stock" is defined in the preamble of this Warrant.

"Cure Date" shall mean 5:00 p.m. Pacific Time on the fifth business day after Parent provides the Warrant Holder with written notice of a Trigger Event.

"Exercise Date" is defined in Section 2.3 of this Warrant.

"Exercise Period" shall mean that period of time beginning on any Trigger Date and ending on any related Cure Date.

"Expiration Date" shall mean the date on which all of Parent's obligations under the Amended and Restated Credit Facility are satisfied in full.

"Loan" shall have the meaning ascribed to such term in the Amended and Restated Credit Facility.

"Parent" is defined in the preamble of this Warrant.

"Percentage Interest" shall mean the Purchase Amount of the Warrant Holder as a fraction of the Purchase Amount of all holders of Series A and B Cash Trigger Warrants in the aggregate.

"Purchase Amount" is defined in the preamble of this Warrant.

"Series A and B Cash Trigger Warrants" shall mean this Warrant and all similar warrants denominated Series A Cash Trigger Warrants or Series B Cash Trigger Warrants issued substantially concurrently with this Warrant.

"Trigger Date" shall mean the date on which (i) Parent fails to pay when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory payment or otherwise or any interest on any Loan or any fee or any other amount due under any of the Credit Documents, provided that at such time Parent does not have sufficient cash or cash equivalents to make such payments, or (ii) Parent defaults in its performance under the covenants set forth in Sections 6.6 or 6.7(e) of the Amended and Restated Credit Facility.

"Trigger Event" shall mean either of the events referenced in clauses (i) and (ii) of the definition of "Trigger Date."

"Under-Subscribed Shares" is defined in Section 2.2(c) of this Warrant.

"Warrants" shall mean this Cash Trigger Warrant and any other Cash Trigger Warrant or Cash Trigger Warrants issued to the original holder of any Cash Trigger Warrant or issued to any transferees of such original holder or subsequent holder.

"Warrant Holder" is defined in the preamble of this Warrant.

"Warrant Price" shall mean the per share price that is the lesser of (i) $9.792 (the "Signing Price"), subject to adjustment in accordance with Section 4 hereof, and (ii) the product obtained by multiplying (x) the Current Market Value as of the Exercise Date and (y) 0.90.

"Warrant Shares" shall mean shares of Common Stock, subject to adjustment or change as herein provided, purchased or purchasable by Warrant Holder upon the exercise hereof.

Section 2. Exercise of Warrant.

2.1 Regulatory Approvals. This Warrant shall not be exercisable until Warrant Holder has obtained all authorizations, consents, orders and approvals required by law, statute, rule, regulation or

under any court order or governmental authority as a condition of such exercise, including without limitation, termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), if applicable. Parent will cooperate with Warrant Holder in preparation of all required filings and will otherwise take all actions reasonably necessary to enable Warrant Holder to obtain all required authorizations, consents, orders and approvals with respect to exercise of the Warrant. If an exercise under this Warrant will require Warrant Holder to make a filing under the HSR Act, Warrant Holder may elect to exercise this Warrant for shares of Series A-1 Convertible Preferred Stock of Parent.

2.2 Exercise Amount.

(a) During any given Exercise Period for which the Trigger Event is clause (i) of the definition of Trigger Date:

(i) the minimum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest and (b) the quotient obtained by dividing (x) $5 million by (y) the Warrant Price as of such Exercise Date; and

(ii) the maximum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest, and (b) the quotient obtained as of the Exercise Date by dividing (x) the sum of (A) the amount of any past due principal or interest payment on any Loan, and (B) US$5 million, by (y) the Warrant Price as of such Exercise Date.

(b) During any given Exercise Period for which the Trigger Event is clause (ii) of the definition of Trigger Date:

(i) the minimum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest and (b) the quotient obtained by dividing (x) $5 million by (y) the Warrant Price as of such Exercise Date; and

(ii) the maximum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest, and (b) the quotient obtained as of the Exercise Date by dividing (x) the sum of (A) the amount by which the required minimum cash and cash equivalents for the applicable month, as set forth on Schedules 6.6 and 6.7(e) of the Amended and Restated Credit Facility exceeds Parent's actual cash and cash equivalents balance, but for an exercise under this Warrant during the Exercise Period, as of the Exercise Date, and (B) US$5 million, by (y) the Warrant Price as of such Exercise Date.

(c) Notwithstanding anything to the contrary in this Section 2.2, in the event that during any Exercise Period the amount of shares obtained by the calculations in clause (b) of Section 2.2(a)(ii) or clause (b) of Section 2.2(b)(ii), as applicable, exceeds the number of shares for which all holders of Series A and B Cash Trigger Warrants ("CTW Holders") tendered Notice of Exercise (in the form attached hereto as Exhibit A) for such Exercise Period (the "Under-Subscribed Shares"), then Warrant Holder may purchase any and all Under-Subscribed Shares if Warrant Holder has tendered a Notice of Additional Exercise (in the form attached hereto as Exhibit D). If the number of shares for which CTW Holders tender Notice of Additional Exercise exceeds the amount of Under-Subscribed Shares, then the Under-Subscribed Shares shall be allocated pro rata (based on each such CTW Holder's relative Purchase Amount) among such CTW Holders, including Warrant Holder.

2.3 Procedure for Exercise of Warrant . Parent shall promptly provide the Warrant Holder with written notice of a Trigger Event, and in no event later than the second Business Day following the Trigger Event. At any time during the Exercise Window, the purchase rights represented by this Warrant are exercisable by the Warrant Holder in whole or in part (but not as to any fractional share of Common Stock) at any time (the "Exercise Date") before the close of business on the Expiration Date by delivery to Parent at its office referred to in Section 9 hereof: (i) the Notice of Exercise in the form of Exhibit A attached hereto, (ii) cash, certified or official bank check payable to the order of Parent, or wire transfer of funds to Parent's account. This Warrant shall be exercised by the Warrant Holder by the surrender of this Warrant to Parent at any time during usual business hours at Parent's principal place of business, accompanied by written notice, substantially in the form of Exhibit A attached hereto, that the Warrant Holder elects to exercise all or a portion of this Warrant and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by Parent) by a written instrument or instruments of transfer in form reasonably satisfactory to Parent duly executed by the Warrant Holder or its duly authorized attorney. Upon exercise of this Warrant, Parent shall deliver to Warrant Holder the certificate or certificates for the shares of Common Stock so purchased within the number of days specified in Rule 15c6-1 under the Exchange Act with respect to open market purchases, *provided* that immediately prior to the close of business on the Exercise Date, the exercising Warrant Holder shall be deemed to be the holder of record of the shares of Common Stock, as applicable, issuable upon exercise of this Warrant, notwithstanding that the share register of Parent shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Person. Immediately prior to the close of business on the Exercise Date, all rights with respect to this Warrant so exercised, including the rights, if any, to receive notices, will terminate (in the case of a partial exercise, to the extent of the portion of this Warrant so exercised), except only the rights of the Warrant Holder to (i) receive certificates for the number of shares of Common Stock, into which this Warrant has been exercised; and (ii) exercise the rights to which the Warrant Holder is entitled as a holder of Common Stock.

2.4 Transfer Restriction Legend. Each certificate for Warrant Shares shall bear the following legend (and any additional legend required by (i) any applicable state securities laws and (ii) any securities exchange upon which such Warrant Shares may, at the time of such exercise, be listed) on the face thereof unless at the time of exercise such Warrant Shares shall be registered under the Securities Act:

> 'THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT."

Any certificate issued at any time in exchange or substitution for any certificate bearing such legend (except a new certificate issued upon completion of a public distribution under a registration statement of the securities represented thereby) shall also bear such legend unless, in the opinion of counsel for Warrant Holder thereof (which counsel shall be reasonably satisfactory to Parent) the securities represented thereby are not, at such time, required by law to bear such legend.

2.5 Preferred Stock Election. Warrant Holder may elect to exercise this Warrant for Series A Convertible Preferred Stock of Parent in lieu of Common Stock.

Section 3. Covenants as to Common Stock. Parent covenants and agrees that all shares of Common Stock that may be issued upon the exercise of the rights represented by this Warrant shall, upon issuance, be validly issued, fully-paid and nonassessable, and free from all taxes, liens and charges with respect to the issue thereof and not issued in violation of any preemptive rights. Parent further covenants and agrees

that it shall pay when due and payable any and all federal and state taxes which may be payable in respect of the issue of this Warrant or any Common Stock or certificates therefor issuable upon the exercise of this Warrant. Parent further covenants and agrees that Parent shall at all times have authorized and reserved, free from preemptive rights, a sufficient number of shares of Common Stock to provide for the exercise of the rights represented by this Warrant. Parent further covenants and agrees that if any shares of capital stock to be reserved for the purpose of the issuance of shares upon the exercise of this Warrant require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon exercise, then Parent shall in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If and so long as the Common Stock issuable upon conversion of this Warrant is listed on any national securities exchange, Parent shall, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion of this Warrant.

Section 4. Signing Price and Other Adjustments

(a) Adjustment for Change in Capital Stock:

(iii) If, after the date hereof, Parent

(A) pays a dividend or makes a distribution on any of its Common Stock in shares of any of its Common Stock or Warrants, rights or options exercisable for its Common Stock, other than a dividend or distribution of the type described in Section 4(a)(i);

(B) pays a dividend or makes a distribution on any of its Common Stock in shares of any of its Capital Stock, other than Common Stock or rights, warrants or options exercisable for its Common Stock and other than a dividend or distribution of the type of described in Section 4(a)(i); or

(C) subdivides any of its outstanding shares of Common Stock into a greater number of shares; or

(D) combines any of its outstanding shares of Common Stock into a smaller number of shares; or

(E) issues by reclassification of any of its Common Stock any shares of any of its Capital Stock;

then the Signing Price in effect immediately prior to such action shall be adjusted so that the Warrant Holder may receive the number of shares of Capital Stock of Parent which such Warrant Holder would have owned immediately following such action if such Warrant Holder had exercised this Warrant immediately prior to such action or immediately prior to the record date applicable thereto, if any. It shall be assumed for purposes of the foregoing calculation that clause (ii) of the definition of "Warrant Price" is not applicable at the time of such hypothetical exercise.

(iv) The adjustment shall become effective immediately after the record date in the case of a dividend or distribution and immediately after the effective date in the case of a

subdivision, combination or reclassification. If such dividend or distribution is not so paid or made or such subdivision, combination or reclassification is not effected, the Signing Price shall again be adjusted to be the Signing Price which would then be in effect if such record date or effective date had not been so fixed.

(v) If, after an adjustment, a Warrant Holder, upon exercise of this Warrant may receive shares of two or more classes of Capital Stock of Parent, the Signing Price shall thereafter be subject to adjustment upon the occurrence of an action taken with respect to any such class of Capital Stock as is contemplated by this Section 4(a) with respect to the Common Stock, on terms comparable to those applicable to the Common Stock in this Section 5.

(b) Whenever the Signing Price is adjusted, Parent shall promptly mail to the Warrant Holder a notice of the adjustment. Parent shall obtain a certificate from Parent's independent public accountants briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence that the adjustment is correct.

(c) If Parent proposes a Fundamental Transaction, as a condition to consummating any such transaction the Surviving Person shall assume the obligations under the Warrants and issue to each Warrant Holder an assumption agreement. The assumption agreement shall provide (i) that the Warrant Holder may exercise the Warrant for the kind and amount of securities, cash or other assets which such holder would have received immediately after the Fundamental Transaction if such holder had exercised such Warrant immediately before the effective date of the transaction, assuming (to the extent applicable) that such holder (A) was not a constituent person or an affiliate of a constituent person to such transaction, (B) made no election with respect thereto, and (C) was treated alike with the plurality of non-electing holders, and (ii) that the Surviving Person shall succeed to and be substituted to every obligation of Parent in respect of this Warrant. The assumption agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 4. The Surviving Person shall mail to Warrant Holder a notice briefly describing the assumption agreement. If the issuer of securities deliverable upon exercise of Warrants is an affiliate of the Surviving Person, that issuer shall join in such assumption agreement.

(d) Parent shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, or shares of Common Stock held in the treasury of Parent, for the issuance upon exercise of this Warrant and payment of the exercise price, the full number of shares of Common Stock then deliverable upon the exercise of the entire Warrant, and the shares so deliverable shall be fully paid and nonassessable and free from all liens and security interests.

(e) After an adjustment to the Signing Price under this Section 4, any subsequent event requiring an adjustment under this Section 4 shall cause an adjustment to the Signing Price as so adjusted.

(f) Parent will not be required to issue fractional shares upon exercise of this Warrant or distribute share certificates that evidence fractional shares. In lieu of fractional shares, there shall be paid to the Warrant Holder an amount in cash equal to the same fraction of the Current Market Value, per share of Common Stock on the Business Day preceding the Exercise Date. Such payments will be made by check.

(g) If at any time Parent grants, Distribution Rights or, without duplication, makes any Distribution on the Capital Stock, then Parent shall grant, issue, sell or make to each Warrant Holder, the aggregate Distribution Rights or Distribution, as the case may be, which such Warrant Holder would have acquired if such Warrant Holder had held the maximum number of shares acquirable upon complete

exercise of this Warrant immediately before the record date for the grant, issuance or sale of such Distribution Rights or Distribution, as the case may be, or, if there is no such record date, the date as of which the record holders of Capital Stock are to be determined for the grant, issue or sale of such Distribution Rights or Distribution, as the case may be.

Section 5. Ownership.

5.1 Ownership of Warrant. Parent may deem and treat the person in whose name this Warrant is registered as the holder and owner hereof (notwithstanding any notations of ownership or writing hereon made by anyone other than Parent) for all purposes and shall not be affected by any notice to the contrary until presentation of this Warrant for registration of transfer as provided in this Section 5.

5.2 Transfer and Replacement. This Warrant and all rights hereunder are transferable in whole or in part upon the books of Parent by Warrant Holder hereof in person or by duly authorized attorney, and a new Warrant or Warrants, of the same tenor as this Warrant but registered in the name of the transferee or transferees (and in the name of Warrant Holder, if a partial transfer is effected) shall be made and delivered by Parent upon surrender of this Warrant duly endorsed, at the office of Parent referred to in Section 9 hereof, together with a properly executed Assignment (in the form of Exhibit B or Exhibit C hereto, as the case may be). Upon receipt by Parent of evidence reasonably satisfactory to it of the loss, theft or destruction, and, in such case, of indemnity or security reasonably satisfactory to it, and upon surrender of this Warrant if mutilated, Parent shall make and deliver a new Warrant of like tenor, in lieu of this Warrant; *provided* that if the Warrant Holder hereof is an instrumentality of a state or local government or an institutional holder or a nominee for such an instrumentality or institutional holder an irrevocable agreement of indemnity by such Warrant Holder shall be sufficient for all purposes of this Section 5, and no evidence of loss or theft or destruction shall be necessary. This Warrant shall be promptly cancelled by Parent upon the surrender hereof in connection with any transfer or replacement. Except as otherwise provided above, in the case of the loss, theft or destruction of a Warrant, Parent shall pay all expenses, taxes and other charges payable in connection with any transfer or replacement of this Warrant, other than stock transfer taxes (if any) payable in connection with a transfer of this Warrant, which shall be payable by Warrant Holder. Warrant Holder shall not transfer this Warrant and the rights hereunder except in compliance with federal and state securities laws.

Section 6. Notice of Dissolution or Liquidation. In case of any distribution of the assets of Parent in dissolution or liquidation (except under circumstances when Section 4(c) shall be applicable), Parent shall give notice thereof to Warrant Holder hereof and shall make no distribution to stockholders until the expiration of thirty days from the date of mailing of the aforesaid notice and, in any case, Warrant Holder hereof may exercise this Warrant within thirty days from the date of the giving of such notice, and all rights herein granted not so exercised within such thirty-day period shall thereafter become null and void.

Section 7. Notice of Dividends. If the Board of Directors of Parent shall declare any dividend or other distribution on its Common Stock except by way of a stock dividend payable in shares of its Common Stock, Parent shall mail notice thereof to Warrant Holder hereof not less than thirty days prior to the record date fixed for determining stockholders entitled to participate in such dividend or other distribution, and Warrant Holder hereof shall not participate in such dividend or other distribution unless this Warrant is exercised prior to such record date. The provisions of this Section 7 shall not apply to distributions made in connection with transactions covered by Section 4.

Section 8. Notices. Any notice or other document required or permitted to be given or delivered to Warrant Holder shall be delivered at, or sent by certified or registered mail to, Warrant Holder at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished to Parent in writing by Warrant Holder. Any notice or other document required or permitted to

be given or delivered to Parent shall be delivered at, or sent by certified or registered mail to, Parent at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished in writing to Warrant Holder by Parent. Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

Section 9. No Rights as Stockholder; Limitation of Liability. This Warrant shall not entitle Warrant Holder to any of the rights of a stockholder of Parent except upon exercise in accordance with the terms hereof. No provision hereof, in the absence of affirmative action by Warrant Holder to purchase shares of Common Stock, and no mere enumeration herein of the rights or privileges of Warrant Holder, shall give rise to any liability of Warrant Holder for the Warrant Price hereunder or as a stockholder of Parent, whether such liability is asserted by Parent or by creditors of Parent.

Section 10. Governing Law; Arbitration. This Warrant and the rights and obligations of the parties under this Warrant shall be governed by and construed and enforced in accordance with the laws of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York). Each of Parent and the Warrant Holder agree that any dispute, controversies or claims (whether in contract, tort or otherwise) arising out of, related to or otherwise by virtue of this Warrant, breach of this Warrant or the transactions contemplated hereby shall be finally settled by arbitration (which shall be the exclusive forum for dispute resolution) as provided in Section 11.10 of the Purchase Agreement.

Section 11. Amendments. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by both parties (or any respective successor in interest thereof). The headings in this Warrant are for purposes of reference only and shall not affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, Parent has caused this Warrant to be signed by its duly authorized officer as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EXHIBIT A

FORM OF NOTICE OF EXERCISE

[To be signed only upon exercise of the Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO EXERCISE THE ATTACHED WARRANT

The undersigned hereby exercises the right to purchase _____ shares of Common Stock which the undersigned is entitled to purchase by the terms of the attached Warrant according to the conditions thereof, and herewith makes payment of $ _____ therefor in cash, certified or official bank check or wire transfer of funds.

All shares to be issued pursuant hereto shall be issued in the name of and the initial address of such person to be entered on the books of Equinix, Inc., a Delaware corporation, shall be:

The shares are to be issued in certificates of the following denominations:

_____

By: _____
Name:
Title

Dated: _____

EXHIBIT B

FORM OF ASSIGNMENT
(ENTIRE)

[To be signed only upon transfer of entire Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ all rights of the undersigned under and pursuant to the attached Warrant, and the undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF ASSIGNMENT
(PARTIAL)

[To be signed only upon partial transfer of Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ (i) the rights of the undersigned to purchase _____ shares of Common Stock under and pursuant to the attached Warrant, and (ii) on a non-exclusive basis, all other rights of the undersigned under and pursuant to the attached Warrant, it being understood that the undersigned shall retain, severally (and not jointly) with the transferee(s) named herein, all rights assigned on such non-exclusive basis. The undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name:
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT D

FORM OF NOTICE OF ADDITIONAL EXERCISE

TO BE EXECUTED BY THE REGISTERED HOLDER

The undersigned hereby gives notice to Parent of its commitment to purchase up to _____ Under-Subscribed Shares by the terms of the attached Warrant according to the conditions thereof.

_____

By: _____

Name:
Title:

Dated: _____

Exhibit 10.81

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE PARENT, QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

EQUINIX, INC.

SERIES B CASH TRIGGER WARRANT

December 31, 2002

Warrant No. CT-2
Date of Initial Issuance: December 31, 2002

THIS CERTIFIES THAT for value received, i-STT Investments Pte Ltd, or its registered assigns (hereinafter called "Warrant Holder"), is entitled to purchase from Equinix, Inc., a Delaware corporation ("Parent"), at any time during any Exercise Period (as defined below) until the Expiration Date (as defined below), the number of shares of common stock, $0.001 par value per share, of Parent ("Common Stock") equal to the quotient obtained as of any Exercise Date (as defined below) by dividing (i) $20 million ("Purchase Amount"), less any proceeds received by Parent from time to time as a result of previous exercises under this Warrant, by (ii) the Warrant Price (as defined below) as of such Exercise Date, at the Warrant Price as of such Exercise Date, payable as provided herein. The exercise of this Warrant shall be subject to the provisions, limitations and restrictions herein contained. This Warrant may be exercised in whole or from time to time in part.

Section 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Securities Purchase Agreement, dated October 2, 2002, by and among Parent, the Guarantors thereto and the Purchasers named therein (the "Purchase Agreement"). For all purposes of this Warrant, the following terms shall have the meanings indicated:

"Amended and Restated Credit Facility" shall mean the Second Amended and Restated Credit and Guaranty Agreement, dated as of December 31, 2002, by and among Equinix Operating Co., Inc., Equinix, Inc. and certain of its subsidiaries, various lenders, Salomon Smith Barney Inc., and Citicorp USA, Inc., as the same may be amended or restated from time to time.

"Credit Documents" shall have the meaning ascribed to such term in the Amended and Restated Credit Facility.

"CTW Holders" is defined in Section 2.2(c) of this Warrant.

"Common Stock" is defined in the preamble of this Warrant.

"Cure Date" shall mean 5:00 p.m. Pacific Time on the fifth business day after Parent provides the Warrant Holder with written notice of a Trigger Event.

"Exercise Date" is defined in Section 2.3 of this Warrant.

"Exercise Period" shall mean that period of time beginning on any Trigger Date and ending on any related Cure Date.

"Expiration Date" shall mean the date on which all of Parent's obligations under the Amended and Restated Credit Facility are satisfied in full.

"Loan" shall have the meaning ascribed to such term in the Amended and Restated Credit Facility.

"Parent" is defined in the preamble of this Warrant.

"Percentage Interest" shall mean the Purchase Amount of the Warrant Holder as a fraction of the Purchase Amount of all holders of Series A and B Cash Trigger Warrants in the aggregate.

"Purchase Amount" is defined in the preamble of this Warrant.

"Series A and B Cash Trigger Warrants" shall mean this Warrant and all similar warrants denominated Series A Cash Trigger Warrants or Series B Cash Trigger Warrants issued substantially concurrently with this Warrant.

"Trigger Date" shall mean the date on which (i) Parent fails to pay when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory payment or otherwise or any interest on any Loan or any fee or any other amount due under any of the Credit Documents, provided that at such time Parent does not have sufficient cash or cash equivalents to make such payments, or (ii) Parent defaults in its performance under the covenants set forth in Sections 6.6 or 6.7(e) of the Amended and Restated Credit Facility.

"Trigger Event" shall mean either of the events referenced in clauses (i) and (ii) of the definition of "Trigger Date."

"Under-Subscribed Shares" is defined in Section 2.2(c) of this Warrant.

"Warrants" shall mean this Cash Trigger Warrant and any other Cash Trigger Warrant or Cash Trigger Warrants issued to the original holder of any Cash Trigger Warrant or issued to any transferees of such original holder or subsequent holder.

"Warrant Holder" is defined in the preamble of this Warrant.

"Warrant Price" shall mean the per share price that is the product obtained by multiplying (x) the Current Market Value as of the Exercise Date and (y) 0.90.

"Warrant Shares" shall mean shares of Common Stock, subject to adjustment or change as herein provided, purchased or purchasable by Warrant Holder upon the exercise hereof.

Section 2. Exercise of Warrant.

2.1 Regulatory Approvals. This Warrant shall not be exercisable until Warrant Holder has obtained all authorizations, consents, orders and approvals required by law, statute, rule, regulation or under any court order or governmental authority as a condition of such exercise, including without

limitation, termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), if applicable. Parent will cooperate with Warrant Holder in preparation of all required filings and will otherwise take all actions reasonably necessary to enable Warrant Holder to obtain all required authorizations, consents, orders and approvals with respect to exercise of the Warrant. If an exercise under this Warrant will require Warrant Holder to make a filing under the HSR Act, Warrant Holder may elect to exercise this Warrant for shares of Series A-1 Convertible Preferred Stock of Parent.

2.2 Exercise Amount.

(a) During any given Exercise Period for which the Trigger Event is clause (i) of the definition of Trigger Date:

(i) the minimum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest and (b) the quotient obtained by dividing (x) $5 million by (y) the Warrant Price as of such Exercise Date; and

(ii) the maximum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest, and (b) the quotient obtained as of the Exercise Date by dividing (x) the sum of (A) the amount of any past due principal or interest payment on any Loan, and (B) US$5 million, by (y) the Warrant Price as of such Exercise Date.

(b) During any given Exercise Period for which the Trigger Event is clause (ii) of the definition of Trigger Date:

(i) the minimum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest and (b) the quotient obtained by dividing (x) $5 million by (y) the Warrant Price as of such Exercise Date; and

(ii) the maximum number of shares Warrant Holder shall be entitled to purchase shall be equal to the product of (a) the Percentage Interest, and (b) the quotient obtained as of the Exercise Date by dividing (x) the sum of (A) the amount by which the required minimum cash and cash equivalents for the applicable month, as set forth on Schedules 6.6 and 6.7(e) of the Amended and Restated Credit Facility exceeds Parent's actual cash and cash equivalents balance, but for an exercise under this Warrant during the Exercise Period, as of the Exercise Date, and (B) US$5 million, by (y) the Warrant Price as of such Exercise Date.

(c) Notwithstanding anything to the contrary in this Section 2.2, in the event that during any Exercise Period the amount of shares obtained by the calculations in clause (b) of Section 2.2(a)(ii) or clause (b) of Section 2.2(b)(ii), as applicable, exceeds the number of shares for which all holders of Series A and B Cash Trigger Warrants ("CTW Holders") tendered Notice of Exercise (in the form attached hereto as Exhibit A) for such Exercise Period (the "Under-Subscribed Shares"), then Warrant Holder may purchase any and all Under-Subscribed Shares if Warrant Holder has tendered a Notice of Additional Exercise (in the form attached hereto as Exhibit D). If the number of shares for which CTW Holders tender Notice of Additional Exercise exceeds the amount of Under-Subscribed Shares, then the Under-Subscribed Shares shall be allocated pro rata (based on each such CTW Holder's relative Purchase Amount) among such CTW Holders, including Warrant Holder.

2.3 Procedure for Exercise of Warrant. Parent shall promptly provide the Warrant Holder with written notice of a Trigger Event, and in no event later than the second Business Day following the

Trigger Event. At any time during the Exercise Window, the purchase rights represented by this Warrant are exercisable by the Warrant Holder in whole or in part (but not as to any fractional share of Common Stock) at any time (the "Exercise Date") before the close of business on the Expiration Date by delivery to Parent at its office referred to in Section 9 hereof: (i) the Notice of Exercise in the form of Exhibit A attached hereto, (ii) cash, certified or official bank check payable to the order of Parent, or wire transfer of funds to Parent's account. This Warrant shall be exercised by the Warrant Holder by the surrender of this Warrant to Parent at any time during usual business hours at Parent's principal place of business, accompanied by written notice, substantially in the form of Exhibit A attached hereto, that the Warrant Holder elects to exercise all or a portion of this Warrant and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by Parent) by a written instrument or instruments of transfer in form reasonably satisfactory to Parent duly executed by the Warrant Holder or its duly authorized attorney. Upon exercise of this Warrant, Parent shall deliver to Warrant Holder the certificate or certificates for the shares of Common Stock so purchased within the number of days specified in Rule 15c6-1 under the Exchange Act with respect to open market purchases, *provided* that immediately prior to the close of business on the Exercise Date, the exercising Warrant Holder shall be deemed to be the holder of record of the shares of Common Stock, as applicable, issuable upon exercise of this Warrant, notwithstanding that the share register of Parent shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Person. Immediately prior to the close of business on the Exercise Date, all rights with respect to this Warrant so exercised, including the rights, if any, to receive notices, will terminate (in the case of a partial exercise, to the extent of the portion of this Warrant so exercised), except only the rights of the Warrant Holder to (i) receive certificates for the number of shares of Common Stock, into which this Warrant has been exercised; and (ii) exercise the rights to which the Warrant Holder is entitled as a holder of Common Stock.

2.4 Transfer Restriction Legend. Each certificate for Warrant Shares shall bear the following legend (and any additional legend required by (i) any applicable state securities laws and (ii) any securities exchange upon which such Warrant Shares may, at the time of such exercise, be listed) on the face thereof unless at the time of exercise such Warrant Shares shall be registered under the Securities Act:

> 'THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT."

Any certificate issued at any time in exchange or substitution for any certificate bearing such legend (except a new certificate issued upon completion of a public distribution under a registration statement of the securities represented thereby) shall also bear such legend unless, in the opinion of counsel for Warrant Holder thereof (which counsel shall be reasonably satisfactory to Parent) the securities represented thereby are not, at such time, required by law to bear such legend.

2.5 Preferred Stock Election. Warrant Holder may elect to exercise this Warrant for Series A Convertible Preferred Stock of Parent in lieu of Common Stock.

Section 3. Covenants as to Common Stock. Parent covenants and agrees that all shares of Common Stock that may be issued upon the exercise of the rights represented by this Warrant shall, upon issuance, be validly issued, fully-paid and nonassessable, and free from all taxes, liens and charges with respect to the issue thereof and not issued in violation of any preemptive rights. Parent further covenants and agrees that it shall pay when due and payable any and all federal and state taxes which may be payable in respect of the issue of this Warrant or any Common Stock or certificates therefor issuable upon the exercise of

this Warrant. Parent further covenants and agrees that Parent shall at all times have authorized and reserved, free from preemptive rights, a sufficient number of shares of Common Stock to provide for the exercise of the rights represented by this Warrant. Parent further covenants and agrees that if any shares of capital stock to be reserved for the purpose of the issuance of shares upon the exercise of this Warrant require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued or delivered upon exercise, then Parent shall in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be. If and so long as the Common Stock issuable upon conversion of this Warrant is listed on any national securities exchange, Parent shall, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion of this Warrant.

Section 4. Adjustments

(a) If Parent proposes a Fundamental Transaction, as a condition to consummating any such transaction the Surviving Person shall assume the obligations under the Warrants and issue to each Warrant Holder an assumption agreement. The assumption agreement shall provide (i) that the Warrant Holder may exercise the Warrant for the kind and amount of securities, cash or other assets which such holder would have received immediately after the Fundamental Transaction if such holder had exercised such Warrant immediately before the effective date of the transaction, assuming (to the extent applicable) that such holder (A) was not a constituent person or an affiliate of a constituent person to such transaction, (B) made no election with respect thereto, and (C) was treated alike with the plurality of non-electing holders, and (ii) that the Surviving Person shall succeed to and be substituted to every obligation of Parent in respect of this Warrant. The assumption agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 4. The Surviving Person shall mail to Warrant Holder a notice briefly describing the assumption agreement. If the issuer of securities deliverable upon exercise of Warrants is an affiliate of the Surviving Person, that issuer shall join in such assumption agreement.

(b) Parent shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, or shares of Common Stock held in the treasury of Parent, for the issuance upon exercise of this Warrant and payment of the exercise price, the full number of shares of Common Stock then deliverable upon the exercise of the entire Warrant, and the shares so deliverable shall be fully paid and nonassessable and free from all liens and security interests.

(c) Parent will not be required to issue fractional shares upon exercise of this Warrant or distribute share certificates that evidence fractional shares. In lieu of fractional shares, there shall be paid to the Warrant Holder an amount in cash equal to the same fraction of the Current Market Value, per share of Common Stock on the Business Day preceding the Exercise Date. Such payments will be made by check.

(d) If at any time Parent grants, Distribution Rights or, without duplication, makes any Distribution on the Capital Stock, then Parent shall grant, issue, sell or make to each Warrant Holder, the aggregate Distribution Rights or Distribution, as the case may be, which such Warrant Holder would have acquired if such Warrant Holder had held the maximum number of shares acquirable upon complete exercise of this Warrant immediately before the record date for the grant, issuance or sale of such Distribution Rights or Distribution, as the case may be, or, if there is no such record date, the date as of which the record holders of Capital Stock are to be determined for the grant, issue or sale of such Distribution Rights or Distribution, as the case may be.

Section 5. Ownership.

5.1 Ownership of Warrant. Parent may deem and treat the person in whose name this Warrant is registered as the holder and owner hereof (notwithstanding any notations of ownership or writing hereon made by anyone other than Parent) for all purposes and shall not be affected by any notice to the contrary until presentation of this Warrant for registration of transfer as provided in this Section 5.

5.2 Transfer and Replacement. This Warrant and all rights hereunder are transferable in whole or in part upon the books of Parent by Warrant Holder hereof in person or by duly authorized attorney, and a new Warrant or Warrants, of the same tenor as this Warrant but registered in the name of the transferee or transferees (and in the name of Warrant Holder, if a partial transfer is effected) shall be made and delivered by Parent upon surrender of this Warrant duly endorsed, at the office of Parent referred to in Section 9 hereof, together with a properly executed Assignment (in the form of Exhibit B or Exhibit C hereto, as the case may be). Upon receipt by Parent of evidence reasonably satisfactory to it of the loss, theft or destruction, and, in such case, of indemnity or security reasonably satisfactory to it, and upon surrender of this Warrant if mutilated, Parent shall make and deliver a new Warrant of like tenor, in lieu of this Warrant; *provided* that if the Warrant Holder hereof is an instrumentality of a state or local government or an institutional holder or a nominee for such an instrumentality or institutional holder an irrevocable agreement of indemnity by such Warrant Holder shall be sufficient for all purposes of this Section 5, and no evidence of loss or theft or destruction shall be necessary. This Warrant shall be promptly cancelled by Parent upon the surrender hereof in connection with any transfer or replacement. Except as otherwise provided above, in the case of the loss, theft or destruction of a Warrant, Parent shall pay all expenses, taxes and other charges payable in connection with any transfer or replacement of this Warrant, other than stock transfer taxes (if any) payable in connection with a transfer of this Warrant, which shall be payable by Warrant Holder. Warrant Holder shall not transfer this Warrant and the rights hereunder except in compliance with federal and state securities laws.

Section 6. Notice of Dissolution or Liquidation. In case of any distribution of the assets of Parent in dissolution or liquidation (except under circumstances when Section 4(c) shall be applicable), Parent shall give notice thereof to Warrant Holder hereof and shall make no distribution to stockholders until the expiration of thirty days from the date of mailing of the aforesaid notice and, in any case, Warrant Holder hereof may exercise this Warrant within thirty days from the date of the giving of such notice, and all rights herein granted not so exercised within such thirty-day period shall thereafter become null and void.

Section 7. Notice of Dividends. If the Board of Directors of Parent shall declare any dividend or other distribution on its Common Stock except by way of a stock dividend payable in shares of its Common Stock, Parent shall mail notice thereof to Warrant Holder hereof not less than thirty days prior to the record date fixed for determining stockholders entitled to participate in such dividend or other distribution, and Warrant Holder hereof shall not participate in such dividend or other distribution unless this Warrant is exercised prior to such record date. The provisions of this Section 7 shall not apply to distributions made in connection with transactions covered by Section 4.

Section 8. Notices. Any notice or other document required or permitted to be given or delivered to Warrant Holder shall be delivered at, or sent by certified or registered mail to, Warrant Holder at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished to Parent in writing by Warrant Holder. Any notice or other document required or permitted to be given or delivered to Parent shall be delivered at, or sent by certified or registered mail to, Parent at its address for notices set forth in the Purchase Agreement or to such other address as shall have been furnished in writing to Warrant Holder by Parent. Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed. Any notice so addressed and otherwise delivered shall be deemed to be given when actually received by the addressee.

Section 9. No Rights as Stockholder; Limitation of Liability . This Warrant shall not entitle Warrant Holder to any of the rights of a stockholder of Parent except upon exercise in accordance with the terms hereof. No provision hereof, in the absence of affirmative action by Warrant Holder to purchase shares of Common Stock, and no mere enumeration herein of the rights or privileges of Warrant Holder, shall give rise to any liability of Warrant Holder for the Warrant Price hereunder or as a stockholder of Parent, whether such liability is asserted by Parent or by creditors of Parent.

Section 10. Governing Law; Arbitration . This Warrant and the rights and obligations of the parties under this Warrant shall be governed by and construed and enforced in accordance with the laws of the State of New York (including Section 5-1401 and Section 5-1402 of the General Obligations Law of the State of New York). Each of Parent and the Warrant Holder agree that any dispute, controversies or claims (whether in contract, tort or otherwise) arising out of, related to or otherwise by virtue of this Warrant, breach of this Warrant or the transactions contemplated hereby shall be finally settled by arbitration (which shall be the exclusive forum for dispute resolution) as provided in Section 11.10 of the Purchase Agreement.

Section 11. Amendments. This Warrant and any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by both parties (or any respective successor in interest thereof). The headings in this Warrant are for purposes of reference only and shall not affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, Parent has caused this Warrant to be signed by its duly authorized officer as of the date first written above.

EQUINIX, INC.

By: /s/ PETER VAN CAMP

Name: Peter Van Camp
Title: Chief Executive Officer

EXHIBIT A

FORM OF NOTICE OF EXERCISE

[To be signed only upon exercise of the Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO EXERCISE THE ATTACHED WARRANT

The undersigned hereby exercises the right to purchase _____ shares of Common Stock which the undersigned is entitled to purchase by the terms of the attached Warrant according to the conditions thereof, and herewith makes payment of $ _____ therefor in cash, certified or official bank check or wire transfer of funds.

All shares to be issued pursuant hereto shall be issued in the name of and the initial address of such person to be entered on the books of Equinix, Inc., a Delaware corporation, shall be:

The shares are to be issued in certificates of the following denominations:

_____

By: _____
Name
Title:

Dated: _____

EXHIBIT B

FORM OF ASSIGNMENT
(ENTIRE)

[To be signed only upon transfer of entire Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ all rights of the undersigned under and pursuant to the attached Warrant, and the undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF ASSIGNMENT
(PARTIAL)

[To be signed only upon partial transfer of Warrant]

TO BE EXECUTED BY THE REGISTERED HOLDER
TO TRANSFER THE ATTACHED WARRANT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto _____ (i) the rights of the undersigned to purchase _____ shares of Common Stock under and pursuant to the attached Warrant, and (ii) on a non-exclusive basis, all other rights of the undersigned under and pursuant to the attached Warrant, it being understood that the undersigned shall retain, severally (and not jointly) with the transferee(s) named herein, all rights assigned on such non-exclusive basis. The undersigned does hereby irrevocably constitute and appoint _____ Attorney to transfer said Warrant on the books of Equinix, Inc., a Delaware corporation, with full power of substitution.

i-STT Investments Pte Ltd

By: _____

Name
Title:

Dated: _____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT D

FORM OF NOTICE OF ADDITIONAL EXERCISE

TO BE EXECUTED BY THE REGISTERED HOLDER

The undersigned hereby gives notice to Parent of its commitment to purchase up to _____ Under-Subscribed Shares by the terms of the attached Warrant according to the conditions thereof.

_____

By: _____

Name
Title:

Dated: _____

Exhibit 10.82

EQUINIX, INC.

and

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A.,
as Trustee

FIRST SUPPLEMENTAL INDENTURE

dated as of December 28, 2002

13% Senior Notes due 2007

Supplementing the Indenture dated as of December 1, 1999

FIRST SUPPLEMENTAL INDENTURE, dated as of December 28, 2002 (this "First Supplemental Indenture"), between EQUINIX, INC., a Delaware corporation (the "Company"), and STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A., a national banking association, as trustee (the "Trustee"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Indenture (as defined below).

RECITALS

The Company and the Trustee executed and delivered the Indenture, dated as of December 1, 1999 (the "Indenture"), providing for the issuance thereunder by the Company, and the authentication and delivery by the Trustee, of the Company's 13% Senior Notes due 2007 (the "Notes").

The Company commenced an offer to exchange the Notes for cash and shares of the Company's common stock and, in connection therewith, a solicitation of consents from the registered holders of the Notes (the "Holders") to certain amendments to the Indenture, the particulars of which are more fully set forth herein (the "Amendments").

The Holders of a majority in aggregate principal amount of the outstanding Notes, determined as provided in the Indenture, have consented to the Amendments in accordance with the provisions of Section 9.2 of the Indenture, and all other conditions set forth in the Indenture to the execution and delivery of this First Supplemental Indenture have been fulfilled and satisfied.

NOW, THEREFORE, in consideration of the foregoing and of the mutual premises and covenants contained herein and for other good and valuable consideration, the parties hereto agree, for the equal and ratable benefit of the respective Holders from time to time of the Notes, as follows:

ARTICLE 1

AMENDMENTS TO THE INDENTURE

SECTION 1.1. Amendments to the Indenture. Sections 4.03, 4.04, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.14, 4.15, 4.16, 5.01, 6.01 and 8.04 of the Indenture are hereby amended and restated in their entirety to read as set forth on Schedule 1 hereto. All terms defined in Section 1.01 of the Indenture that are used only in sections or subsections of the Indenture, or in other defined terms that are used only in sections or subsections of the Indenture, that are deleted and omitted as provided on Schedule 1 hereto are hereby deleted.

ARTICLE 2

MISCELLANEOUS

SECTION 2.1. Effectiveness and Effect.

(a) This First Supplemental Indenture shall take effect on the date hereof; provided, however, that the Amendments set forth on Schedule 1 hereto and made pursuant to

Article 1 hereof shall become operative only upon the date of and simultaneously with, and shall have not any force or effect prior to, the delivery by the Company to the Trustee of an Officers' Certificate stating that on that date, after delivery of such Officers' Certificate, the Company will accept Notes for exchange pursuant to the Exchange Offer referred to in such Officers' Certificate.

(b) The provisions set forth in this First Supplemental Indenture shall be deemed to be, and shall be construed as part of, the Indenture to the same extent as if set forth fully therein. All references to the Indenture in the Indenture or in any other agreement, document or instrument delivered in connection therewith or pursuant thereto shall be deemed to refer to the Indenture as amended by this First Supplemental Indenture. Except as amended hereby, the Indenture shall remain in full force and effect.

SECTION 2.2. Trust Indenture Act Controls. If any provision of this First Supplemental Indenture limits, qualifies or conflicts with another provision that is required by or deemed to be included in this First Supplemental Indenture by the Trust Indenture Act of 1939, the required or incorporated provision shall control.

SECTION 2.3. Governing Law. THIS FIRST SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 2.4. Counterparts. The parties may sign any number of copies of this First Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 2.5. Severability. In case any provision in this First Supplemental Indenture 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 2.6. Effect of Headings. The headings of the Articles and Sections of this First Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

[The remainder of this page intentionally left blank.]

[First Supplemental Indenture signature page]

Dated as of December 28, 2002

EQUINIX, INC.

By: /s/ PHILIP J. KOEN

Name: Philip J. Koen
Title: President

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A., as Trustee

By: /s/ SCOTT C. EMMONS

Name: Scott C. Emmons
Title: Vice President

Schedule 1 to First Supplemental Indenture

Amendments to the Indenture

SECTION 4.3. Intentionally omitted.

SECTION 4.4. Compliance Certificate.

(a) The Company shall deliver to the Trustee within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto. For purposes of this paragraph, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

(b) Intentionally omitted.

(c) The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

(d) If Liquidated Damages are payable under the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of Liquidated Damages that is payable and (ii) the date on which Liquidated Damages is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable. If Liquidated Damages have been paid by the Company directly to the persons entitled to them, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

SECTION 4.7. Intentionally omitted.

SECTION 4.8. Intentionally omitted.

SECTION 4.9. Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) Intentionally omitted.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) The Company shall not, and shall not permit any of its Restricted Subsidiaries (other than Foreign Subsidiaries) to, incur any Indebtedness (including Permitted Indebtedness) that is contractually subordinated in right of payment to any other Indebtedness unless such Indebtedness is also contractually subordinated in right of payment to the Notes on substantially identical terms; *provided, however,* that no Indebtedness shall be deemed to be contractually subordinated in right of payment to any other Indebtedness solely by virtue of being unsecured.

SECTION 4.10. Intentionally omitted.

SECTION 4.11. Intentionally omitted.

SECTION 4.12. Intentionally omitted.

SECTION 4.14. Intentionally omitted.

SECTION 4.15. Intentionally omitted.

SECTION 4.16. Intentionally omitted.

SECTION 5.1. Merger, Consolidation or Sale of Assets.

(a) The Company may not, directly or indirectly, (1) consolidate or merge with or into (whether or not the Company is the surviving corporation), or sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to another Person or (2) permit any of the Restricted Subsidiaries to enter into any such transaction or series of transactions if it would result in such disposition of all or substantially all of the assets of the Company and the Restricted Subsidiaries on a consolidated basis, unless:

(i) Intentionally omitted;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition shall have been made assumes all the obligations of the Company under the Registration Agreement, the Notes, the Exchange Notes and this Indenture pursuant to a supplemental indenture in a form reasonably satisfactory to the Trustee;

(iii) Intentionally omitted;

(iv) Intentionally omitted;

(v) Intentionally omitted;

(vi) Intentionally omitted.

(b) The Company may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person.

SECTION 6.1. Events of Default.

(a) Events of Defaults" are:

(i) default for 30 days in the payment when due of interest on the Notes; or

(ii) default in the payment when due of the principal of, or premium, if any, on the Notes; or

(iii) intentionally omitted;

(iv) failure by the Company or any of the Restricted Subsidiaries for 60 days after notice to comply with any of its other agreements in this Indenture, the Notes or the Escrow Agreement; or

(v) intentionally omitted;

(vi) intentionally omitted;

(vii) intentionally omitted;

(viii) the Company or any of its Significant Subsidiaries:

(A) commences a voluntary case under any Bankruptcy Law,

(B) consents to the entry of an order for relief against it in an involuntary case under any Bankruptcy Law,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due; or

(ix) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Significant Subsidiaries,

(B) appoints a custodian of the Company or any of its Significant Subsidiaries or for all or substantially all of the property of the Company or any of its Significant Subsidiaries, or

(C) orders the liquidation of the Company or any of its Significant Subsidiaries; and the order or decree remains unstayed and in effect for 60 consecutive days.

(b) The Company shall be required to deliver to the Trustee annually a statement regarding compliance with this Indenture, and the Company shall be required within 30 days of becoming aware of any Default or Event of Default to deliver to the Trustee a statement specifying such Default or Event of Default. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal of, premium, if any, or interest on, the Notes) if it determines that withholding notice is in their interest.

SECTION 8.4 Conditions to Legal or Covenant Defeasance.

The following shall be the conditions to the application of either Section 8.02 or 8.03 hereof to the outstanding Notes:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Company must irrevocably deposit, or cause to be deposited, with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the outstanding Notes on the stated maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(b) intentionally omitted;

(c) intentionally omitted;

(d) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(e) intentionally omitted;

(f) the Company must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over other creditors of the Company, or with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and

(g) the Company must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel in the United States reasonably acceptable to the Trustee, each stating that

the conditions precedent provided for or relating to Legal Defeasance or Covenant Defeasance, as applicable, in the case of the Officers' Certificate, in clauses (a) through (f) and, in the case of the Opinion of Counsel, in clauses (a) (with respect to the validity and perfection of the security interest) and clauses (b) and (c) of this paragraph, have been complied with.

Exhibit 21.1

LIST OF EQUINIX'S SUBSIDIARIES

Name	Jurisdiction
Equinix Operating Co., Inc.	Delaware
Equinix-DC, Inc.	Delaware
Equinix Europe, Inc.	Delaware
Equinix Cayman Islands Holdings	Cayman Islands
Equinix Dutch Holdings N.V.	Netherlands
Equinix Netherlands B.V.	Netherlands
Equinix France SARL	France
Equinix Germany GmbH	Germany
Equinix UK Limited	United Kingdom
Eagle Acquisition Corp. 1A	Delaware
Eagle Acquisition Corp. 1B	Delaware
Eagle Acquisition Corp. 2A	Delaware
Equinix Asia Pacific Pte Ltd	Singapore
Equinix Singapore Holdings Pte Ltd	Singapore
Equinix Singapore Pte Ltd	Singapore
Equinix Pacific Pte Ltd	Singapore
Pihana Pacific Singapore Opco Pte Ltd	Singapore
Equinix Thailand Holdings, Inc.	Delaware
Equinix Shanghai Co., Ltd.	China
Pihana Pacific SDN, BHD	Malaysia
Equinix Pacific, Inc.	Delaware
Equinix Pacific Business Recovery, Inc.	Delaware
Pihana Pacific Business Recovery Hong Kong Limited	Hong Kong
Equinix Japan KK (in Kanji)	Japan
Equinix Australia Pty Ltd	Australia
Equinix Hong Kong Ltd	Hong Kong

Exhibit 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-85202, 333-71870 and 333-45280) of Equinix, Inc. of our report dated March 21, 2003 relating to the financial statements, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Jose, California
March 25, 2003

Exhibit 99.1

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

In connection with the Annual Report of Equinix, Inc. (the "Company") on Form 10-K for the period ending December 31, 2002 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
March 26, 2003

Exhibit 99.2

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

In connection with the Annual Report of Equinix, Inc. (the "Company") on Form 10-K for the period ending December 31, 2002 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
March 26, 2003